

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1896.

No. 177.

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THE BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF LAKE, COLORADO, PETITIONER,

vs.

HARRY H. DUDLEY.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

---

PETITION FILED OCTOBER 11, 1897.

CERTIORARI AND RETURN FILED NOVEMBER 1, 1897.

(16,687.)

172  
175  
560

68  
77

800  
15  
4000



(16,687.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

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COUNTY OF LAKE, COLORADO, PETITIONER,*vs.*

HARRY H. DUDLEY.

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OF APPEALS FOR THE EIGHTH CIRCUIT.

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*a* Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, A. D. 1896, of said court, begun and held at the United States court house, in the city of St. Louis, Missouri, on the first Monday in December, it being the seventh day of December, A. D. 1896, before the Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges, and Honorable William Lochren, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest : JOHN D. JORDAN,  
*Clerk U. S. Circuit Court of Appeals, Eighth Circuit.*

Be it remembered that heretofore, to wit, on the twenty-ninth day of June, A. D. 1896, a transcript of record, in pursuance of a writ of error directed to the circuit court of the United States for the district of Colorado, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein Harry H. Dudley was plaintiff in error and The Board of County Commissioners of the County of Lake, Colorado, was defendant in error, which said transcript of record, as printed in accordance with the designations of the parties for use on the hearing of said cause in said United States circuit court of appeals, is in the words and figures following, to wit :

1 In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, }  
Colorado, Defendant in Error. }

To the clerk of said court and the above-named defendant in error :

You will please take notice that we hereby designate that in the printing of the record in the above-entitled cause the following exhibits, some of which were admitted in evidence and others of which were excluded, shall not be printed, to wit, Exhibits Ten (10) to Twenty-seven (27), inclusive, and Exhibits Thirty-one (31) and Thirty-two (32), and that all of the balance of the record be printed.

H. B. JOHNSON AND  
DAN'L E. PARKS,  
*Attorneys for Plaintiff in Error.*

Received a copy of the above designation this 29th day of June, A. D. 1896.

THOMAS, BRYANT & LEE,  
*Attorneys for Defendant in Error.*

No. 821. In the U. S. circuit court, eighth circuit. Harry H. Dudley *vs.* The Board of County Commissioners of the County of Lake, Colorado. Designation of pl'ff in error of record to be printed. Filed Jul- 2, 1896. John D. Jordan, clerk. Dan'l E. Parks, H. B. Johnson, att'ys for pl'ff in error.

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

*vs.*

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE,  
Defendant in Error.

To the clerk of said court and the above-named plaintiff in error :

You will please take notice that in addition to the matters designated by the attorneys for the plaintiff in error to be printed  
2 in the printed transcript of record in the above-entitled cause, which was served upon us the 29th day of June, A. D. 1896, we desire certain other portions of said record to be printed by said clerk for the reason that they will be necessary to a hearing of said cause by the judges of said court when the same is reached for hearing ; and the portions of said record which we so designate in addition to those designated by the said plaintiff in error are the following :

Exhibit No. 10 which was offered by the defendant upon the trial of said cause, and admitted in evidence ; also exhibits numbered 16, 17, 18, 19, 20, 21, 23 and 25 all of which were offered in evidence by the defendant on the trial of said cause and admitted by the court.

You are further notified that in lieu of printing Exhibit No. 10 attorneys for the defendant in error will consent that a stipulation may be signed by counsel for both sides, a copy of which is herewith served, and that said stipulation may be printed and taken to be in lieu of Exhibit No. 10 and may be printed in lieu of printing said Exhibit 10 at length and in case plaintiff in error does not consent to take said stipulation in lieu of said exhibit, then we hereby designate said exhibit to be printed in full.

GEORGE R. ELDER,

THOMAS, BRYANT AND LEE,

*Attorneys for Defendant in Error.*

Received a copy of the above designation, together with a copy of said stipulation and notice this 10th of July, A. D. 1896.

DAN'L E. PARKS,

*Pl'ff's Att'y.*

In the United States circuit court of appeals. Harry H. Dudley *vs.* The Board of County Commissioners of Lake County. Notice as to printing record. Filed Jul- 23, 1896. John D. Jordan, clerk. Thomas, Bryant & Lee, att'ys for def. in error.

*Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.*

Be it remembered that heretofore and on to wit: the 31st day of March A. D. 1892 came Harry H. Dudley by Albert E. Grier his attorney and filed in said court his complaint, and sued out of and under the seal of said court a writ of summons against The Board of County Commissioners of the County of Lake, Colorado.

3 And the said complaint is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:  
District of Colorado,

*Complaint.*

In the Circuit Court of the United States of the 8th Judicial Circuit  
Held within and for said District of Colorado.

HARRY H. DUDLEY, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE,  
Colorado, Defendant. }

The above-named plaintiff complains against the above-named defendant, and alleges the following facts constituting his cause of action:

That he is a citizen and resident of the State of New Hampshire; that the said defendant is a political governmental corporation duly organized under and by virtue of the laws of the State of Colorado, and has been so organized and existing since the 8th day of February, A. D. 1879, that by the laws of the State of Colorado as they existed in A. D. 1879, and until this time, the board of county commissioners of this county and of all the counties of the State were and are authorized to create indebtedness for the purpose of erecting necessary public buildings, after having submitted at a general election the question of incurring such debt to the legally qualified electors of said county, who had paid a tax upon property assessed to them in such county for the year immediately preceding such election, that the said Board of County Commissioners of the County of Lake duly, in due time form and manner submitted the question of incurring the debt evidenced by the bonds and coupons herein-after mentioned to such qualified electors at the general election legally called and duly held in said county of Lake on the 7th day of October, A. D. 1879; that the majority of all the legal ballots cast upon the question at said election were in favor of incurring the said indebtedness. That thereupon the said Board of County Commissioners of said County of Lake did on the 31st day of July, A. D. 1880, cause to be made and executed certain bonds of said county of Lake, which said bonds are in words and figures following to wit:

No.—.

\$500.

UNITED STATES OF AMERICA, *County of Lake, Colorado.*

Know all men by these presents that the County of Lake, in the State of Colorado, acknowledges itself indebted, and promises to pay to ——— or bearer five hundred dollars, for value received, redeemable at the pleasure of the county after ten years, and absolutely (sue) and payable twenty years from the date hereof at the office of the treasurer of the county of Lake aforesaid, in the city of Leadville, in said county, with interest at the rate of ten per centum per annum, payable annually on the first day of April of each year, at the office of the county treasurer aforesaid, upon delivery of the coupon hereto attached.

This bond is one of a series of fifty thousand dollars, which the board of county commissioners of said county have issued for the purpose of erecting necessary public buildings, by virtue of and in compliance with a vote of a majority of the qualified voters of said county, at an election duly held on the 7th day of October, A. D. 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled "An act concerning counties, county officers and county government and repealing laws on these subjects" approved March 24, A. D. 1877, and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond.

In testimony whereof, the Board of County Commissioners of said County of Lake has caused the seal of the said county and the signature of its chairman to be hereunto affixed, and the same to be attested by the clerk of the county, at Leadville, this thirty-first day of July, A. D. 1880.

\_\_\_\_\_,  
*Chairman Board of County Commissioners.*

[COUNTY SEAL.]

Attest: \_\_\_\_\_,  
*County Clerk.*

And this plaintiff further says that to each of said bonds were attached coupons for the annual interest accruing on said bonds, which said coupons were in form as follows:

§—. The County of Lake, in the State of Colorado, §—.

Will pay the bearer — dollars at the office of the treasurer of Lake county on — interest on bond for necessary public buildings.

\_\_\_\_\_,  
*Chairman Board of County Commissioners.*

No.—.

And that there was a sufficient number of coupons attached to each of said bonds in form as above set forth, to provide for the payment of all of the interest on said bonds.

5 Plaintiff further alleges that on to wit the 31st day of July' A. D. 1880, the said defendant The Board of County Commissioners of the said County of Lake, for value received, made, executed sold and delivered said bonds in the aggregate amount of fifty thousand dollars, and each of them to sundry *bona fide* purchasers thereof. That previous thereto said bonds and each of them were signed by the chairman of the board of county commissioners of said county to wit: Joseph Pearce, and attested by the county clerk of said county of Lake, to wit Joseph H. Wells under the seal of said county of Lake; and that the said coupons attached to the said bonds and each of them were also filled up and signed by said Joseph Pearce, the then chairman of the Board of County Commissioners of said County of Lake. That said coupons and each of them bear the number of the bond to which it was and is attached, and the same are severally countersigned by Joseph H. Wells, county clerk of said county of Lake.

That the said county of Lake from that time, to wit, from the 31st day of July, A. D. 1880, up to and until the first day of April, A. D. 1884, paid the interest on said bonds annually, in accordance with the terms of said bonds, and of the coupons thereto attached, and plaintiff avers that defendant on the first day of April, A. D. 1884, made default in the payment of said coupons, and then and there neglected, omitted and refused and still neglects omits and refuses to pay the same or any part thereof, and the said defendant on the first day of April, A. D. 1885, also made default in the payment of the interest due on the coupons attached to said bonds due and payable on the first day of April, A. D. 1886, and has ever since that time and does still refuse and neglect to pay the same or any part thereof, and the said defendant on the first day of April, A. D. 1887, also made default in the payment of the interest expressed in coupons attached to said bonds and due on the first day of April, A. D. 1887, and still does refuse and neglect to pay said interest or any part thereof; and the said defendant on the first day of April, A. D. 1888, also made default of the interest expressed in coupons attached to said bonds, and does still refuse and neglect to pay said interest or any part thereof; and the said defendant on the first day of April, A. D. 1889, also made default of the interest expressed in coupons attached to said bonds and due on the first day of April, A. D. 1889, and still does refuse and neglect to pay said interest or any part thereof; and the said defendant on the first day of April, A. D. 1890, also made default of the interest expressed in coupons attached to said bonds and due on the first day of April,

6 A. D. 1890, and still does refuse and neglect to pay said interest or any part thereof; and the said defendant on the first day of April A. D. 1891, also made default in the payment of the interest expressed in coupons attached to said bonds, and due on the first day of April, A. D. 1891, and still does refuse and neglect to pay said interest or any part thereof.

Plaintiff further alleges that he is the owner and holder of coupons formerly attached to and forming a part of certain of the above-described bonds of said county of Lake, numbered 4, 5, 6, 7



8, 9, 10 and 11, respectively, to wit: twenty-five of said bonds being for the sum of one thousand dollars each with one-hundred-dollar coupons attached and fifty of said bonds being for the sum of five hundred dollars each with fifty-dollar coupons attached, and the numbers of the bonds to which attached and the amount of the coupons being more particularly set forth in Exhibits "A," "B," "C," "D," "E," "F," "G," and "H" respectively, as follows, to wit:

DENVER, COLO., March 31, 1892.

*Lake County (Colo.) Public Building Bond Coupons.*

Exhibit "A" coupon No. 4 (due April 1, A. D. 1884)		
from bonds Nos. 92 to 111 inc. say 20 cpns. at		
\$50.....	.....	\$1,000
Exhibit "B" coupon No. 5 (due April 1, A. D. 1885)		
from bonds Nos. 55 to 60 inc. say 6 cpns. at \$100.	\$600	
Bonds Nos. 92 to 111 inc. say 20 cpns. at \$50.....	1,000	
	<hr/>	1,600
Exhibit "C" coupon No. 6 (due April 1, A. D. 1886)		
from bonds Nos. 80, 81 and 82, say three coupons		
at \$100.....	300	
Bonds Nos. 83 to 86 inc. and 92 to 111 inc., say 24		
coupons at \$50.....	1,200	
	<hr/>	1,500
Exhibit "D" coupon No. 7 (due April 1, A. D. 1887)		
from bonds Nos. 55 to 64 inc., 68 to 79 inc. and 80		
to 82 inc., say 25 coupons at \$100.....	2,500	
Bonds Nos. 65, 66, 67, 87 to 91 inc., 83 to 86 inc. and		
92 to 111, say 32 coupons at \$50.....	1,600	
	<hr/>	4,100
Exhibit "E" coupon No. 8 (due April 1, A. D. 1888)		
from bonds Nos. 55 to 64 inc. 73 to 79 inc., and 80		
to 82 inc., say 20 coupons at \$100.....	2,000	
Bonds Nos. 65, 66, 83 to 86 inc., and 92 to 111 inc.,		
say 26 coupons at \$50.....	1,300	
	<hr/>	3,300
7 Exhibit "F" coupon No. 9 (due April 1,		
A. D. 1889) from bonds Nos. 55 to 64 inc.		
68 to 79 inc., and 80 to 82 inc. say 25 coupons at		
\$100.....	2,500	
Bonds Nos. 65, 66, 67, 83 to 91 inc., and 92 to 129		
inc. say 50 coupons at \$50.....	2,500	
	<hr/>	5,000

DENVER, COLO., March 31, 1892.

*Lake County (Colo.) Public Building Bond Coupons.*

Exhibit "G" coupon No. 10 (due April 1, A. D. 1890) from bonds Nos. 55 to 64 inc. and 68 to 82 inc. say 25 coupons at \$100 each.....	2,500	
Bonds Nos. 65 to 67 inc. 83 to 91 and 92 to 912 inc. say 50 coupons at \$50.....	2,500	\$5,000

Exhibit "H" coupon No. 11 (due April 1, A. D. 1891) from bonds Nos. 55 to 64 inc. and 68 to 82 inc. say 25 coupons at \$100.....	2,500	
Bonds Nos. 65 to 67 inc. 83 to 91 inc. and 92 to 129 inc. say 50 coupons at \$50.....	2,500	5,000

*Summary of Coupons in Exhibits.*

Exhibit—		
A. Coupon No. 4, due April 1, A. D. 1884.....	\$1,000	
B. Coupon No. 5, " " 1885.....	1,600	
C. Coupon No. 6, " " 1886.....	1,500	
D. Coupon No. 7, " " 1887.....	4,100	
E. Coupon No. 8, " " 1888.....	3,300	
F. Coupon No. 8, " " 1889.....	5,000	
G. Coupon No. 9, " " 1890.....	5,000	
H. Coupon No. 11, " " 1891.....	5,000	
Total.....	\$26,500	

That the principal due on said coupons amounts to the following sums, to wit: amount due on coupons falling due on April 1, A. D. 1884, one thousand dollars (\$1,000); amount due on coupons falling due on April 1, A. D. 1885, one thousand six hundred dollars (\$1,600); amount due on coupons falling due on April 1, A. D. 1886, one thousand five hundred dollars (\$1,500); amount due on coupons falling due on April 1, 1887, four thousand one hundred dollars (\$4,100); amount due on coupons falling due on April 1, A. D. 1888, three thousand three hundred dollars (\$3,300); amount due on coupons falling due on April 1, A. D. 1889, five thousand dollars (\$5,000); amount due on coupons falling due on April 1, 1890, five thousand dollars (\$5,000); amount due on coupons falling due on April 1, A. D. 1891, five thousand dollars (\$5,000).

8 And plaintiff avers that he became the purchaser of said coupons before this action, for a valuable consideration paid by him and without notice of any claim at law or in equity, affecting their validity.

Plaintiff further alleges that the amounts due on all of said coupons are now wholly due and unpaid.

Wherefore the said plaintiff demands judgment against the said defendant for the sum of twenty-six thousand five hundred dollars (\$26,500) together with interest on the sum of one thousand dollars (\$1,000) from the first day of April, A. D. 1884, to the date of rendi-

tion of judgment herein at the rate of ten per cent. per annum ; also interest on the sum of one thousand six hundred dollars (\$1,600) from the first day of April, A. D. 1885, at the rate of ten per cent. per annum until date of rendition of judgment herein ; also interest on the sum of one thousand five hundred dollars (\$1,500) from the first day of April A. D. 1886, at the rate of ten per cent. per annum until date of rendition of judgment herein ; also interest on the sum of four thousand one hundred dollars (\$4,100) from the first day of April, A. D. 1887, at the rate of ten per cent. per annum until rendition of judgment herein ; also interest on the sum of three thousand three hundred dollars from the first day of April, A. D. 1888, at the rate of ten per cent. per annum until rendition of judgment herein ; also interest on the sum of five thousand dollars (\$5,000) from the first day of April, A. D. 1889, at the rate of ten. per cent. per annum until date of rendition of judgment herein ; also interest on the sum of five thousand dollars (\$5,000) from the first day of April, A. D. 1890, at the rate of ten per cent. per annum until date of rendition of judgment therein ; also interest on the sum of five thousand dollars (\$5,000) from the first day of April, A. D. 1891, at the rate of ten per cent. per annum until date of rendition of judgment herein.

ALBERT E. GRIER,

*Plaintiff's Attorney, 202 Ernest & Crammer*

*Block, Denver, Colorado.*

UNITED STATES OF AMERICA, }  
*State of Colorado, County of Arapahoe,* } ss :

James H. Morris, being duly sworn, says that he has read the foregoing complaint, and knows the contents thereof ; that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true ; that the plaintiff in said cause is not a citizen or resident of the State of Colorado, and is not within the State ; and that all the material allegations of said complaint are within the knowledge of affiant.

JAMES H. MORRIS.

Subscribed and sworn to before me this 31st day of March, A. D. 1892.

[SEAL.]

GEORGE W. WRIGHT,

*Notary Public in and for Arapahoe County, Colo.*

My commission expires May 24th, 1892.

Indorsed : 2758. Circuit court. Dudley vs. B'd Com'rs, Lake County. Complaint. Filed M'ch 31, 1892. Robert Bailey, clerk U. S. circuit court. Albert E. Grier, pl'ff's att'y, att'y-at-law, Denver, Colorado.

And the said summons and proof of service is in words and figures as follows, to wit :

*Summons.*

UNITED STATES OF AMERICA, } ss :  
*District of Colorado,*

In the Circuit Court of the United States for the District of Colorado.

HARRY H. DUDLEY, Plaintiff,  
*versus*

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE,  
 Colorado, Defendant. }

Complaint filed in the clerk's office this 31st day of March, A. D.  
 1892.

The President of the United States of America to the Board of  
 County Commissioners of the County of Lake, Colorado, Greet-  
 ing:

You, and each of you, are hereby notified that an action has been  
 brought in said court, by Harry H. Dudley, plaintiff, against you  
 as defendant to recover the sum of twenty-six thousand five hundred  
 dollars (\$26,500) due from you the said defendants to the said plain-  
 tiff upon certain interest coupons upon certain public building fund-  
 ing bonds issued by you, together with certain interests thereon as  
 more particularly set forth and described in the complaint filed  
 herein and to which reference is here made.

You are hereby required to appear and demur or answer to the  
 complaint filed in said action, in said court, within ten days  
 10 (exclusive of the day of service) after this summons shall be  
 served on you, if such service shall be made within the county  
 of Arapahoe; otherwise within forty days from the day of service;  
 and if you fail so to (—), the said plaintiff will take judgment against  
 you by default, according to the prayer of the said complaint, and  
 will apply to the court for the relief demanded therein.

Witness, the Honorable Melville W. Fuller, Chief Justice of the  
 Supreme Court of the United States, and the seal of the said circuit  
 court, at the city of Denver, in said district, this 31st day of March,  
 A. D. 1892, and of the Independence of the United States the 116th  
 year.

[SEAL.]

ROBERT BAILEY, *Clerk.*

*Proof of Service.*

UNITED STATES OF AMERICA, } ss :  
*District of Colorado,*

DENVER, COLO., April 14, A. D. 1892.

I hereby certify, that I received the within writ on the 31st day  
 of March, A. D. 1892, and that I have personally served the same  
 upon the said defendant by delivering to Charles Whipple, clerk  
 and recorder of Lake county, Colo., and each of them personally, a

true copy of the within writ, at the time and place as follows: at Leadville, county of Lake, on the 13th day of April A. D. 1892.

This writ therefore returned served as the law directs, this 14th day of April, A. D. 1892.

ALBERT H. JONES, *Marshal*,  
By A. W. BROWN,  
*Deputy Marshal*.

Indorsed: No. 2758. Circuit court of the United States for the district of Colorado. Harry H. Dudley, plaintiff, *versus* The Board of County Commissioners of the County of Lake, Colorado, defendant. Summons. Filed this 16th day of April, A. D. 1892. Robert Bailey, clerk. Albert E. Grier, of Denver, attorney for plaintiff.

UNITED STATES OF AMERICA, }  
*District of Colorado,* } ss :

In the Circuit Court of the Eighth Judicial Circuit in and for said District.

HARRY H. DUDLEY, Plaintiff,  
vs.

THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF LAKE,  
State of Colorado, Defendant. }

The defendant, by Philip O'Farrell and Thomas, Bryant & Lee, its attorneys, now comes and for answer to the complaint herein alleges:

11 First. That whether the plaintiff is a citizen or resident of the State of New Hampshire the defendant has not and cannot obtain sufficient knowledge or information on which to base a belief. It admits that the defendant is a municipal corporation organized and existing under and by virtue of the laws of the State of Colorado since the 8th day of February, A. D. 1879, but it denies that by the laws of the State of Colorado as they existed in said year A. D. 1879, or at all since that time the said defendant was or is authorized to create any indebtedness for the purpose of erecting necessary public buildings after having submitted at a general election the question of incurring such debt to the legal and qualified electors of the said county who had paid a tax upon property assessed to them in said county for the year immediately preceding such election, unless at such time the amount and character of its indebtedness had not equaled or exceeded the constitutional limitation imposed thereupon.

It denies that the said board of county commissioners properly submitted any question of incurring the debts evidenced by any bonds or coupons mentioned in said complaint at any general election on the 7th day of October, 1879, or elsewhere, or that the same was properly had or carried.

It denies on information and belief that the said so-called bonds in said complaint mentioned, if any such there be, are in words and figures as set forth in said complaint; that whether the said county,

for value received, made, executed sold or delivered said so-called bonds, or attempted to make, execute or deliver said so-called bonds in the aggregate sum of fifty thousand dollars, or in any sum, or any of said bonds, to *bona fide* purchasers, the defendant has not and cannot obtain sufficient knowledge or information on which to base a belief.

That whether said so-called or pretended bonds, or any of them, were signed by the chairman of said board, or attested by the clerk thereof under the seal of said county, and whether said so-called or pretended coupons, or any of them, were ever executed or signed by said chairman and countersigned by said clerk the defendant has not and cannot obtain sufficient knowledge or information on which to base a belief.

It denies that the same were executed, sold or delivered on the 31st day of July, A. D. 1880, or at any other time during said year.

It admits that the defendant paid interest upon certain bonds up to and until the first day of April A. D. 1884, but whether  
12 the said interest so paid was upon the said bonds mentioned in said complaint the defendant has not and cannot obtain sufficient knowledge or information on which to base a belief.

But it admits that from the first day of April A. D. 1884, to the said first day of April, A. D. 1891, inclusive and during each of the years intervening, the said defendant declined, neglected, omitted and refused, and still neglects, omits, declines and refuses to pay interest on said pretended or any bonds which are alleged to be the bonds of said county or upon which it is pretended the said county is liable, and that it will continue to refuse, neglect and decline to pay the same until and unless by the judgment of this honorable court it is required so to do.

That whether the plaintiff is the owner and holder of certain or any of the so-called coupons, or whether said so-called coupons are, in whole or in part, for the sums mentioned as alleged in said complaint, or any other sums, or whether the plaintiff became the purchaser of said so-called coupons before the commencement of this action or at any time for a valuable or any consideration paid by him and that without any notice of any claim at law or in equity affecting the validity of all or any of them the defendant has not and cannot obtain sufficient knowledge or information on which to base a belief; but it denies that it is indebted to the said plaintiff in the sum or sums of money mentioned in said complaint, or any part or portion thereof by reason of anything in said complaint contained.

And for a second and separate and further answer and defense to said complaint it alleges:

That the said alleged, supposed and so-called bonds and (and) the said alleged and so-called coupons thereto alleged to have been attached mentioned and set forth in the complaint herein were attempted and assumed to be made and issued, executed and delivered and the debt and obligation thereof assumed and attempted to be contracted by the said county of Lake and by the said Board of County Commissioners of said County of Lake in direct violation

and contravention of the provisions, requirements and conditions of section 6, article eleven (11) of the constitution of the State of Colorado and the laws made in pursuance thereof, because the defendant saith that the assessed valuation of the taxable property of the said county of Lake in and for the year A. D. 1879 was less than the sum of \$5,000,000.00, to wit, the sum of \$3,485,628.00.

That the aggregate amount of the indebtedness of said county contracted and incurred by said county through and by its  
13 board of county commissioners subsequent to the 1st day of July, A. D. 1876, and prior to the said 7th day of October, A. D. 1879 and on said day existing and outstanding against said county was the sum of to wit, \$56,966.47.

That for the said year 1879 the aggregate amount of indebtedness which said county or said board of county commissioners might lawfully contract, assume or incur as legal and outstanding against said county by submitting the question thereof to the voters of said county duly qualified to vote thereon, or in any other manner or for any purpose or purposes whatsoever was limited by the said constitutional proviso to the sum of not more than \$41,827.54.

And the defendant further answering says:

That the limitation of the aggregate amount of indebtedness which could lawfully be contracted by said county or its board of county commissioners or permitted to exist or be an outstanding liability against said county on or before the said 7th day of October A. D. 1879, had already been reached and exceeded and said limitation of indebtedness aforesaid had already been reached and exceeded as aforesaid before the pretended debt of \$50,000.00 alleged to be evidenced by the so-called and pretended bonds in said complaint mentioned and the interest on which is alleged to be evidenced by the so-called and pretended coupons in said complaint mentioned was assumed to be submitted to or voted upon by the voters of said county qualified to vote thereon.

Wherefore, defendant prays judgment for its costs in this behalf expended.

3. And for a third and further answer and defense to the said action the defendant says, on information and belief, that notwithstanding the said question of the submission of the contraction of said indebtedness for the purposes aforesaid was submitted to the qualified voters of the said county of Lake at a general election held on, to wit, the 7th day of October A. D. 1879, yet the defendant says, on information and belief, that none of the said bonds were issued or authorized to be issued prior to the 31st day of July A. D. 1880, which, according to its information, is the date expressed in the said pretended bonds, and the defendant says that the assessed valuation of the taxable property in said county of Lake in and for the year A. D. 1880, was more than \$5,000,000.00, to wit, \$11,126,489.00, and that the aggregate amount of the indebtedness of said county by the said county or its board of county commissioners contracted or incurred prior to the 31st day of July A. D. 1880, and on said day existing and outstanding against said county was the sum, to wit, of \$235,801.39.



14 That in the year A. D. 1880 the aggregate amount of debt or liability which said county or its said county commissioners might lawfully contract or incur and permit to be in existence and outstanding against said county by submitting the question thereof to the voters of said county qualified to vote thereon or in any other manner or for any purpose or purposes whatsoever, was limited by the 6th section of the 10th article of the constitution of the State of Colorado to not more than \$66,758.93.

That the limitation of the aggregate amount of indebtedness which could then lawfully be contracted or incurred for or on behalf of or against said county had long before and on, to wit, the said 31st day of July, A. D. 1880, been reached and exceeded and had, therefore, been reached, passed, and exceeded before the said so-called and pretended bonds and the said so-called and pretended coupons in said complaint mentioned were issued, attempted or assumed to be issued, executed, transferred or delivered as in said complaint stated.

Wherefore, the defendant declares that the said bonds were and each of them was and is, and the said coupons were and each of them was and is void, null and of no effect and do not constitute any indebtedness whatever against the said county of Lake or against this defendant.

Wherefore, defendant prays judgment for its costs in this behalf expended.

And for a fourth separate and further answer and defense in this behalf the defendant says:

That although it is pretended and alleged that the said bonds to which the said pretended coupons of the plaintiff were attached were issued, sold, transferred and delivered on, to wit, the 31st day of July, A. D. 1880, yet the defendant says upon information and belief, that in truth and in fact the said bonds were transferred, delivered and assigned by the said county of Lake or its board of county commissioners, on, to wit, the 15th day of November A. D. 1880 as of the date of the said 31st day of July, A. D. 1880, and not at the said time or date; that on the said date when the said bonds were actually issued the amount of the indebtedness of the county of Lake then incurred and outstanding greatly exceeded twice the amount of \$1.50 to each \$1,000.00 thereof and the assessed valuation of its taxable property at the time exceeded \$5,000,000.00 and that the amount represented by said bonds was in excess of and beyond the amount already specified and referred to and the same was therefore void and of no effect.

15 And for a fifth and further and separate defense and answer to the said complaint the defendant says:

That as to so much of said complaint as is based upon or refers to certain so-called coupons numbered respectively 4 and 5 being Exhibit "A" and Exhibit "B" in said complaint referred to, and further in said complaint referred to as "coupon No. 4, due April 1st, A. D. 1884, from bonds Nos. 92 to 111 inclusive, 20 coupons at \$50.00—\$1,000.00" and "coupon No. 5, due April 1st, A. D. 1885, from bonds Nos. 55 to 66 inclusive, 6 coupons at \$100.00—\$600.00

and bonds Nos. 92 to 111 inclusive, 20 coupons at \$50.00—\$1,000.00 \$1,600.00" the defendant alleges:

That the causes of action, if any there be, based upon or arising out of said so-called coupons above referred to, in favor of the plaintiff and against the defendant, accrued on the 1st day of April, A. D. 1884 and on the last day of April, A. D. 1885 respectively, as is alleged in said complaint, and more than six years prior to the commencement of this action.

Wherefore, the defendant prays judgment for its costs in this behalf expended.

And for a sixth and separate and further defense and answer to so much of said complaint and the matters and things therein stated as refer to and are based upon the interest upon the amount of the so-called coupons therein referred to and declared upon from the dates upon which said so-called coupons are alleged to have become due and payable, to wit, interest on the sum of \$1,000.00 from April 1st, A. D. 1884, to the date of rendition of judgment herein, and on the sum of \$1,600.00 from April 1st, A. D. 1885, to the date of rendition of judgment herein, and on the sum of \$1,500.00 from April 1st, A. D. 1886, to the date of rendition of judgment herein, and on the sum of \$4,100.00 from April 1st, A. D. 1887, to the date of rendition of judgment herein, and on the sum of \$3,300.60 from April 1st, 1888, to the date of rendition of judgment herein, and on the sum of \$5,000.00 from April 1st, 1889, to the date of rendition of judgment herein, and on the sum of \$5,000 from April 1st, 1890, to the date of rendition of judgment herein and on the sum of \$5,000.00 from April 1st, 1891, to the date of rendition of judgment herein at the rate of ten per cent. per annum, defendant alleges:

That said so-called coupons are and were, as is alleged in said complaint, attached to certain so-called bonds and represented the amount of annual interest due and payable on said so-called bonds and were in themselves evidences of no part of said assumed  
 16 or pretended indebtedness evidenced by said so-called bonds but indeed and in fact said so-called coupons represented interest on said principal of said so-called indebtedness and no part or portion of the principal itself.

Wherefore, the defendant prays judgment against the plaintiff as to said items and each of them.

And for a seventh and additional answer and defense to the said supposed cause of action this defendant says:

That by section 448 of the General Laws of the State of Colorado of 1877, the same then being in force, it is provided and conditioned that the submission of the question of incurring an indebtedness for the erection of necessary public buildings etc., to a vote of the people shall not be had, made or done if, at the time of such submission the aggregate amount of indebtedness of the county exclusive of debts contracted prior to July 1st, 1876, in counties in which the assessed valuation of the property shall be less than \$5,000,000.00 and exceeding \$1,000,000.00, shall equal \$12.00 on each \$1,000.00 thereof, and the defendant says that at the time of the proposed

submission of the said question of said indebtedness to the said legal, qualified voters of said county of Lake and at the time of said election on the said 7th day of October, A. D. 1879, the assessed valuation of the property of said Lake county was to wit, \$3,485,628.00 and that at such time the aggregate amount of indebtedness of the said county, exclusive of any and all debts contracted prior to July 1st, 1876, was \$56,966.47 being in amount over and in excess of \$12.00 on each \$1,000.00 of said valuation.

Wherefore, the defendant says that the action of the said county commissioners in passing any and all resolutions submitting the question of the creation of said indebtedness to the vote of the said qualified electors, and the action of said electors in voting thereon, if any did vote thereon, and the action of the said county commissioners in issuing bonds upon said vote were and are and each of them was and is absolutely null and void.

That the said supposed cause of action of the plaintiff is based upon coupons attached to certain so-called pretended bonds claimed and alleged to have been issued under and in pursuance of such vote and proceedings taken at said time and under said conditions and none other.

Wherefore, the defendant prays judgment and for its costs in this behalf expended.

PHIL. O'FARRELL AND  
THOMAS, BRYANT & LEE,  
*Att'ys for Defendant.*

17 UNITED STATES OF AMERICA, } ss:  
District of Colorado,

Personally appeared Charles S. Thomas who being first duly sworn according to law deposes and says:

That he is one of the attorneys for the defendant in the above-entitled cause, and makes this affidavit because of the absence of all of the members of said board and its officers from the said county where affiant resides and where the said suit is pending; that he has read the above and foregoing answer and that the matters and things therein contained are true according to the best of his knowledge, information and belief.

CHARLES S. THOMAS.

Subscribed and sworn to before me this 13th day of June, A. D. 1892.

My commission expires March 26", '96.

[SEAL.]

SAM. MILTON,  
*Notary Public.*

Indorsed: No. 2758. In the circuit court of Colorado. Harry H. Dudley, plaintiff, vs. The Board of County Commissioners Lake County, defendant. Answer. Filed Jun-13, 1892. Robert Bailey, clerk U. S. circuit court. Phil. O'Farrell, Thomas, Bryant & Less, attorneys for def't.

*Replication.*

UNITED STATES OF AMERICA, }  
*State and District of Colorado,* } ss :

In the Circuit Court of the United States of the Eighth Judicial Circuit Held at Denver, within and for said District of Colorado.

HARRY H. DUDLEY, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, }  
 Colorado, Defendant. }

Now comes the plaintiff in the above-entitled cause, and, for replication to the answer of defendant, denies each and every allegation therein contained.

D. E. PARKS AND  
 H. B. JOHNSON,  
*Attorneys for Plaintiff.*

STATE OF COLORADO, }  
*County of Arapahoe,* } ss :

George H. Taylor, being duly sworn on oath says, that he has read the foregoing replication and knows the contents thereof; that said plaintiff is not a resident of, or now within the State of  
 18 Colorado; that the facts are within the knowledge of affiant; that the said replication is true of the knowledge of affiant, except as to the matters which are therein stated on information and belief, and as to those matters, he believes it to be true.

GEORGE H. TAYLOR.

Subscribed and sworn to before me this second day of December, A. D. 1893.

[SEAL.]

GEORGE W. WRIGHT,  
*Notary Public in and for Arapahoe County, Colo.*

My commission expires May 5th, A. D. 1896.

Indorsed: No. 2758. In the circuit court. Harry H. Dudley vs. The Board of County Commissioners of Lake County. Replication. Filed Dec. 2, 1893. Robert Bailey, clerk U. S. circuit court. H. B. Johnson & D. E. Parks, att'ys for plaintiff.

Fiftieth day, November term.

TUESDAY, *January 7th*, A. D. 1896.

Present: The Honorable Moses Hallett, district judge and the Honorable John A. Riner, district judge of the district of Wyoming, assigned to the district of Colorado and other officers as noted on the 5th day of November, 1895.

And before the Honorable John A. Riner, district judge of the district of Wyoming, assigned to the district of Colorado, the following proceedings were had:

HARRY H. DUDLEY

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY  
of Lake.

2758.

Money demanded.

At this day comes the plaintiff by H. B. Johnson, Esq., his attorney and the defendant by W. H. Bryant, Esq., its attorney also comes, and thereupon comes a jury, to wit:

Jonathan W. Pendleton,  
George W. Gildersleeve,  
C. H. McLaughlin,  
M. M. Baldwin,  
Charles E. Pennock,  
G. B. Nixon,

William A. Craig,  
G. C. Killebrew,  
Frederick C. Eberly,  
Winton Smith,  
Joseph C. Dresser,  
James J. Flint,

twelve good and lawful men, and they are duly selected and tried empanelled and sworn to well and truly try the matters at issue herein, and a true verdict render according to the evidence.

19 And the said jurors having heard the evidence produced herein and the instructions of the court, upon their oaths do say they find the issues herein joined for the defendant.

Wherefore it is considered by the court, that the said defendant go hence hereof without day and have and recover of and from the said plaintiffs its costs by it in this behalf laid out and expended to be taxed and have execution therefor.

And thereupon on motion of the plaintiff day and until sixty (60) days from this day is allowed him within which time to file a bill of the exceptions reserved by him upon the trial of the issues herein joined.

Fifty-ninth day.

FRIDAY, January 17th, A. D. 1896.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge of (this) district of Wyoming, assigned to the district of Colorado, and other officers as noted on the 5th day of November, 1895.

And before the Honorable John A. Riner, district judge, the following proceedings were had:

HARRY H. DUDLEY

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF  
Lake.

2758.

Money demand.

At this day comes the plaintiff by D. E. Parks, Esq., his attorney, and the defendant by W. H. Bryant, Esq., its attorney, also comes.

And the motion of the plaintiff for a new trial of the issues herein joined coming on now to be heard is argued by counsel and the court

being now fully advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing that the said motion be and the same is hereby overruled.

And thereupon it is ordered by the court that the plaintiff have day until ninety (90) days from this day within which time to file herein a bill of the exceptions reserved by him upon the trial of the issues herein joined.

20 UNITED STATES OF AMERICA, } ss:  
District of Colorado, }

In the Circuit Court of the United States in and for said District.

HARRY H. DUDLEY, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, } 2758.  
Colorado, Defendant. }

Appearances: For plaintiff, Dan'l E. Parks, Esq., H. B. Johnson, Esq. For defendant, W. H. Bryant, Esq.

*Bill of Exceptions.*

Be it remembered, that on this 7th day of January, A. D. 1896, the same being one of the regular juridical days of the May A. D. 1895 term of said court, the said cause came on for trial before a jury; and thereupon the said plaintiff to sustain the issues on his behalf gave in evidence as follows, that is to say:

GEORGE W. WRIGHT, a witness produced, sworn and examined on behalf of the plaintiff, testified as follows:

Direct examination.

By H. B. JOHNSON, Esq.:

Q. Mr. Wright, you may examine these packages of coupons and state whether you have recently made any computation of the amount that is due upon those coupons, principal and interest. (Hands to witness.)

A. These coupons are well known to me; I have handled them a great many times. I have computed the interest this morning; and the principal is \$23,900, and the interest up to date is \$15,873.85. The total is \$39,773.85 to date.

Q. Do you know who the present owner of these coupons is?

A. Yes, sir.

Q. Who?

A. Harry H. Dudley. The last time I knew where he was, he was in Concord, N. H.

Q. He is the plaintiff in this suit?

A. Yes, sir.

Q. Where does he reside?

A. Well, his home is in Concord, New Hampshire.

Q. Are you personally acquainted with Mr. Dudley?

A. Yes, sir.

Q. Is he a citizen of the United States?

A. Yes, sir; he is a citizen of the United States.

21 Q. Residing at Concord, New Hampshire?

A. Yes, sir.

Q. How long have you been acquainted with the history of this issue of bonds?

A. About ten years; ever since the bonds were first issued.

Q. Do you know to whom the county first sold these bonds?

Defendant objects because it is a matter of record.

The COURT: He may ask him if he knows.

To which ruling of the court the defendant by counsel then and there duly excepted.

A. According to the record, Mr. E. W. Rollins—

Defendant objects for the same reason.

The COURT: Yes, if you know, you may state whether you know or not.

WITNESS: According to Mr. Rollins' ledger and cash book, he bought them from—

Defendant objected to witness testifying as to what the ledger and cash book show.

Q. You may state whether, of your own knowledge, the firm of Rollins & Young, or E. H. Rollins & Sons, originally purchased these bonds from Lake county.

Q. You recollect that they were issued?

A. The bonds were bought by Mr. Rollins personally before the firm was established, and they were partly handled by Mr. Rollins personally, and partly by the old firm of Rollins & Young, which was formed in 1881.

Q. Do you know what he paid for them?

A. I do not.

Defendants object because immaterial.

The COURT: That is not important in this case.

Q. Where does Mr. Rollins now reside?

A. In Boston.

Q. Are you acquainted with the firm of E. H. Rollins & Sons?

A. Yes, sir.

Q. Is that a corporation?

A. Yes, sir.

MR. BRYANT: We object. The proof of a corporation is by certain statutory requirements and not by oral testimony.

WITNESS: I was an officer of the corporation at one time.

22 Q. Under the laws of what State?

Defendant objected because immaterial. Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.



A. Under the laws of New Hampshire.

Q. Do I understand you to say that Mr. E. H. Rollins is also a citizen of the State of Massachusetts at the present time?

A. Mr. Edward W. Rollins?

Q. Yes.

A. Yes, sir.

Q. He resides in Boston?

A. Yes, sir.

Cross-examination.

By W. H. BRYANT, Esq.:

Q. Where did Mr. E. W. Rollins reside in 1892?

A. In 1892 he claimed residence here, I believe.

Q. Was he not a citizen of Colorado in 1892?

A. Well, that is a question; he was travelling around so much; I do not remember.

Q. Did he have a house here on Stout and Thirteenth streets, and live here all the time, practically?

A. No, sir.

Q. He had a house here and kept it all the time?

A. Yes, sir.

Q. And was president of the Denver Athletic Club here?

A. Yes, sir.

Q. And voted here?

A. I do not know about his voting here.

Q. Did he not reside here for 10 or 15 years, just prior to that time?

A. Yes, sir.

Q. And had been a citizen of the State?

A. Yes, sir.

Q. And is it not a fact that he did not remove to Boston until last year? To make it his home I mean?

A. I could not say positively; that is, I could not say of my own knowledge.

Q. Now when did you compute the interest on this, Mr. Wright?

A. Today.

Q. And the amount of principal is \$39,793?

A. 39,773.85.

Q. You say that Mr. Harry Dudley is the owner of those?

A. Yes, sir.

Q. How do you know that?

23 A. Well, I was an employee of Rollins & Sons up to March, 1894, and I made the entries of these coupons when they were sold to Mr. Dudley.

Q. Well, when were they sold to him?

A. I could not tell you.

Q. Well, could you tell within a year?

A. No, I could not without seeing the books.

Q. Could you tell within two years?

A. No, sir, I could not.

Q. How do you know that they were sold to him?

A. Because I recollect making the entries at the time.

Q. Did he ever instruct you to purchase them?

A. My recollection is that he did. He says he did not, but my recollection is that he did personally.

Q. Well, now, when did he instruct you to purchase them?

A. I could not tell you.

Q. When did you go to work for Rollins & Company?

A. In August, 1882.

Q. Was it in that year that he told you to purchase them?

A. No, sir.

Q. Was it the next year?

A. My recollection is that it was somewhere in the vicinity of 1888 or 1889, but I did not expect to be called upon, so I did not look it up at all.

Q. Now, what did he say to you?

A. He told me that he had purchased them.

Q. Told you what?

A. He told me that he had bought them, and to make out a statement for them, and I did so, and Mr. Rollins was standing by; that is my recollection.

Q. Told you he had bought them. That is the first conversation you ever had with him about them?

A. No, sir, the negotiations had been pending some time about it.

Q. Where was Mr. Dudley when he told you that?

A. It was on one of his trips here; I have forgotten when.

Q. Do you know how often he has been out here?

A. Two or three times.

Q. Do you know when he first came to Colorado?

A. No, sir.

Q. And the first that he told you about it was that he had purchased them?

A. Yes, sir.

Q. Sir?

A. Yes, sir. Mr. Rollins was standing by, and we had been discussing about it.

Q. Now, you testified before in this case, didn't you?

24 A. Yes, sir.

Q. And you stated in your testimony that time that you received instructions from Mr. Dudley to purchase them, didn't you?

A. No, sir.

Q. Now, are you mistaken on that now?

A. That is a different statement of it.

Q. And that he told you he had purchased them?

A. I was directed to make up a statement of them.

Q. That is all you were directed to do?

A. That is all I had to do.

Q. Then you had nothing to do with the actual purchase of the bonds?

A. No, sir.

Q. So, when you stated before in answer to this question, you gave the following answer: "Well, I received instructions from Mr. Dudley to purchase them; most of their business was done through me." Is that correct or not?

A. I made up my statements. My recollection is that that is the way of it, although he says he does not recollect anything about it.

Q. Says he never told you to buy them?

A. That is what he says, but I have a distinct recollection of the conversation on the matter, and I was directed to make up my statements.

Q. As a matter of fact, all that you did was to make some entries on the books?

A. That is not it exactly; I cut off a lot of coupons and arranged them, and made statements of what they were, etc.

Q. And you think that was in 1888 or 1889?

A. I cannot say what it was; I do not remember.

Q. Did you see Mr. Dudley pay any money for these bonds?

A. I did not.

Q. You have seen his deposition, taken in Concord, have you not?

A. Yes, sir.

Q. In which he says that he never had that conversation with you?

A. Yes, sir.

Q. And never did instruct you to purchase them?

A. Yes, sir.

Q. And never paid a dollar for them?

A. I do not know about that.

Q. Don't remember that statement?

A. He says that he does not recollect telling me. I distinctly recollect the conversation, and I think if I could see him I could convince him he was mistaken.

25 Q. You testified before that he told you to buy them for him?

A. Yes, sir.

Q. Did he ever tell you that?

A. Yes, sir.

Q. Told you to buy them for him?

A. He certainly did.

Q. Did you ever go and see anybody about buying them?

A. Mr. Rollins was standing there buying them for him, and I was told to put them up, directed to prepare them for him on behalf of the Rollins Company and turned them over to him.

Q. Your interpretation of the means requisite to buy coupons for him, is simply to make a few entries on the books?

A. Well, I made both, as I have explained several times it was my business to put those things up, for those people, and the money was passed over to Mr. Rollins and these other parties.

Q. Now, you brought these coupons in the original suit, did you not, the first time this case was tried, did you not?

A. I do not understand what you mean.

Q. That is, you had them in the original envelopes?

A. I had them in the same envelope, yes, sir.

Q. Not in these, were they?

A. No, sir; those have been put up since.

Q. Now, is it not a fact that when you brought these here before in the original envelope, that they were marked on the back in the name of the true owners of the coupons?

A. They might have been originally—

Q. They might have been the names of the original owners?

A. Yes, sir; the names that Mr. Rollins sold the bonds to.

Q. But those names have stayed on them until the trial of this suit in 1893—didn't they?

A. I do not remember.

Q. That is when the first trial was had, is it not?

A. I do not remember.

Q. And the names on the back of the bonds at that time, or the coupons were, among others, the Nassau savings bank; that was on some, was it not?

A. The Nassau savings bank, of what?

Q. The Nassau of New Hampshire.

A. I do not know whether Mr. Rollins purchased them from Mr. Dudley. Mr. Rollins bought them from somebody.

Q. Mr. Stanley's name was on some of them, was it not?

A. I believe he was on some of them.

Q. And David Craig, Jr., J. H. Jagger, Henry D. Hawley and L. C. Hubbard's name was on some of them?

26 A. I recollect Mr. Hubbard's name, but I do not recollect the others.

Q. And the Union Five Cent Savings Bank of Exeter, New Hampshire, was on some of them?

A. They owned some of them at the same time.

Q. Yes; and Susan F. Jones was on some of them?

A. Yes, sir.

Q. So that when these coupons were introduced in evidence in this case on the first trial, the envelopes containing them contained the names of those original owners?

A. Yes, sir; they did.

Q. You had not thought during the four or five years that Mr. Dudley owned them, to put them in another envelope?

A. No, we kept them in that way.

Q. Is it not a fact, Mr. Wright, that Mr. Dudley never paid a dollar for these bonds, and they were simply transferred for the purpose of bringing suit in this court?

A. I do not know. I honestly believe Mr. Dudley owned those bonds.

Q. You did at that time?

A. I did then and I believe now that Mr. Dudley owned them.

Q. Whether he paid a cent for them or not?

A. I do not know that he paid anything for them; it was very rarely that I received any money on behalf of the Rollins Company.

# Redirect examination.

By H. B. JOHNSON, Esq. :

Q. As I understand you, Mr. Wright, the names on these envelopes they have alluded to, were simply to indicate the original owners?

A. The original owners of the bonds, so that they could be traced. It was for our convenience that we kept them that way, and not for any such object as Mr. Bryant seems to indicate, or certainly we would not have brought them up here in the original envelopes.

Mr. JOHNSON : I will offer in evidence these coupons.

Mr. BRYANT : We object, because they have not shown that they were cut from the bonds set out in the complaint, or that they are part of the bonds issued which are declared upon in the complaint.

Q. You may examine these bonds, Mr. Wright. (Hands to witness the bonds and withdraws offer temporarily.) Are those the bonds from which these coupons were taken? Are those part of the original bonds referred to by these gentlemen?

27 A. Yes, sir.

Q. And known as the "Court-house bonds"? And these are the coupons sued upon, belonging to those bonds?

A. Yes, sir; I cut most of them myself.

The COURT : What is the date of the bonds?

Mr. BRYANT : The 31st of July, 1880, is the date of this one.

WITNESS : I think there were two dates.

Mr. BRYANT : Some are in December, 1879, or ought to be.

WITNESS : Some are \$100 bonds and some \$500, and are of different dates.

Mr. BRYANT : They have declared in the complaint on these bonds of the 31st of July, 1880, and we object to any other bonds, except those.

Mr. JOHNSON : It is not necessary to go through all those bonds, and coupons, and I offer the bonds and coupons in evidence.

The COURT : There is an objection to the date of the bonds. If those are all of that date alleged in your complaint, it is all right.

Mr. BRYANT : They have alleged in their complaint upon certain bonds of \$500 each, which are dated at that time. Now, this bond which they have shown here, from which some of these coupons were cut, is a \$1,000 bond, and we do not know whether it is the same; whether they cut the coupons from that bond or from the bonds declared upon in the complaint. On the previous trial of this case—there has always been a great deal of uncertainty as to just where these coupons came from. There has been a vast amount of bonds issued by Lake county, and we would like to get them identified so that the county will not be paying this plaintiff for a lot of coupons cut from other bonds, and then have the coupons cut from other bonds brought in and make them pay again. Now this \$1,000 bond is dated the 31st of July, 1880. The bonds which are set forth in the complaint and from which it is claimed that the coupons in this case were cut, is a series of \$500 bonds. We would

like to have them confine their proof to the kind and character of bonds set forth in the complaint; and of course the bonds themselves are not admissible in evidence, I presume, although there is no objection to one going in as a sample of the others, admitting that the one set forth in the complaint is a correct copy. I presume

28 that this complaint would bind them to confine their coupons to the identical bond which is described in the complaint, and prove that they have been cut from those bonds, and I do not think they have done it.

Mr. JOHNSON: The complaint covers all the coupons in suit, and the bond set forth is a sample of the other bonds, of all the bonds. (Reads \$500 bond.) This is a sample of all the bonds. They are of two denominations, \$500 and \$1,000. We identify the coupons and set forth the coupons. Now here are the coupons, Exhibit A to Exhibit F, in which these bonds are described. There cannot be any coupons except those cut from the bonds referred to, and the bonds are identified as Lake county building bonds.

Q. Mr. Wright, state whether the county of Lake ever paid interest on these bonds?

A. Yes, sir.

Mr. BRYANT: I object. It does not make any difference what they have done. They do not show any particular coupons here, and what relates to their coupons is immaterial.

The COURT: I do not think we will go into that. The objection is sustained.

To which ruling of the court the plaintiff by counsel then and there duly excepted.

Mr. JOHNSON: I offer these coupons and bonds in evidence.

Mr. BRYANT: We object to the introduction of the bonds and coupons in evidence for the following reasons: (1) They have never proved or identified either the bonds or the coupons as having been issued by the proper authorities of Lake county; (2) they allege in their complaint that the county of Lake had authority to issue these bonds and complied with the statutes and constitution of Colorado. They have introduced no evidence whatever to prove those allegations; (3) the bonds themselves are not negotiable instruments, in our judgment, and they must prove all the various acts going up to the issuance of them and the power of the county to issue them, independent of any allegations in the complaint; (4) that it appears upon the face of the bonds themselves that they are issued in excess of the constitutional limitation imposed by the constitution of the State of Colorado; and, (5) because there is no proof that the plaintiff in this suit is a *bona fide* holder of these bonds; that is, that he ever paid value for them; and is entitled to any protection which might be given to a *bona fide* holder.

The COURT: These bonds do not recite that they are within the constitutional limitation, as the bonds in the case we had the other day, do they?

29 Mr. BRYANT: No, sir.

Mr. JOHNSON: The court decided that the bonds in the

former trial—the bonds recited compliance with the statute, and the statute is the same and contains the same limitation as the constitution; which brings them directly within that rule.

The COURT: I will overrule Mr. Bryant's objection at this time, and look up the matter before we dispose of it to the jury.

Mr. PARKS: We are prepared with authorities to show that they were issued within the rule. The bond bears the corporate seal of the county, and these are the signatures of the county officers. If necessary I can testify that they were issued by the county.

The following is a sample of said bonds and coupons admitted in evidence, omitting numbers and amounts:

And next following said exhibit is the computation of interest on said bonds by the witness, Wright, which was offered in evidence.

# EXHIBIT 1.

No. —.

8—.

UNITED STATES OF AMERICA, *County of Lake, Colorado.*

Know all men by these presents, that the County of Lake, in the State of Colorado, acknowledges itself indebted, and promises to pay to L. E. Roberts or bearer — dollars for value received redeemable at the pleasure of the county after ten years, and absolutely due and payable twenty years from the date hereof at the office of the treasurer of the county of Lake, aforesaid, in the city of Leadville, in said county, with interest at the rate of ten per centum per annum, payable annually on the first day of April of each year, at the office of the county treasurer aforesaid, upon delivery of the coupon hereto attached.

This bond is one of a series of fifty thousand dollars, which the board of county commissioners of said county have issued for the purpose of erecting necessary public buildings, by virtue of and in compliance with a vote of a majority of the qualified voters of said county, at an election duly held on the 7th day of October, A. D. 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled "An act concerning counties, county officers and county government and repealing laws on these subjects" approved March 24th, A. D. 1877, and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond.

In testimony whereof, the Board of County Commissioners of said County of Lake has caused the seal of the said county and the signature of its chairman to be hereunto affixed and the same to be attested by the clerk of the county, at Leadville, this thirty-first day of July, A. D. 1880.

(Signed)

JOSEPH PEARCE,

*Chairman Board of County Commissioners.*

Attest:

(Signed) JOS. H. WELLS,

*County Clerk.*

[Seal of Lake County, State of Colorado.]



§—. The County of Lake, in the State of Colorado, §—.

Will pay the bearer one hundred dollars at the office of the treasurer of Lake county, on the first day of April 1900 interest on bond for necessary public buildings.

No. —.

(Signed)

JOS. PEARCE,

*Chairman Board of County Commissioners.*

Attest: JOS. H. WELLS,  
*County Clerk.*

Part of act entitled An act concerning counties, county officers, and county government, and repealing laws on these subjects.

447. SEC. 20. The board of county commissioners shall not borrow money for the purposes hereinbefore stated, without having first submitted the question of such loan to a vote of the electors of the county, and without a majority of the voters legally qualified to vote and voting on that question shall have voted therefor.

448. SEC. 21. When the county commissioners of any county shall deem it necessary to create an indebtedness for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, they may, by an order entered of record specifying the amount required and the object for which such debt is to be created submit the question to a vote of the people, at a general election; and they shall cause to be posted a notice of such order in some conspicuous place in each voting precinct in the county, for at least thirty days preceding the election, and all persons voting on that question shall vote by separate ballot, whereon is placed the words "For county indebtedness," or "Against county indebtedness;"

31 such ballot to be deposited in a box provided by the county commissioners for that purpose, and no person shall vote on the question of indebtedness unless he shall have the necessary qualifications of an elector as provided by law, and shall have paid a tax upon property assessed to him in such county for the year immediately preceding; and if, upon canvassing the vote (which shall be canvassed in the same manner as the vote for county officers) it shall appear that a majority of all the votes cast are for county indebtedness, then the county commissioners shall be authorized to contract the debt in the name of the county; provided, that the aggregate amount of indebtedness of any county exclusive of debts contracted prior to July first, 1876, in which the assessed valuation of property shall exceed one million of dollars, for all purposes, shall not be in excess of the following ratio, to wit: Counties in which the assessed valuation of property shall exceed five million of dollars, six dollars on each thousand dollars thereof; counties in which the assessed valuation of property shall be less than five millions, and exceed one million of dollars, twelve dollars on each thousand dollars thereof.

449. SEC. 22. The county commissioners, when authorized as provided in section twenty-one of this act, shall make and issue

coupon bonds of the county, not exceeding the amounts specified in the preceding section, in counties which have an assessed property valuation exceeding one million of dollars, payable at the pleasure of the county, ten years after the date of their issuance, but absolutely due and payable twenty years after such date, bearing interest at the rate of not exceeding ten per cent. per annum, from their date until paid. Said interest payable on the first day of April of each year, and the principal, when due, at the office of the county treasurer of the county, and the county commissioners shall prescribe the form of said bonds, and the coupons thereto; and to provide for the annual interest accruing on the bonds, they shall levy annually a sufficient tax to fully discharge such interest; and for the ultimate redemption of such bonds, they shall levy annually, after ten years from the date of such issuance, such tax upon all taxable property in their county as shall create a yearly fund equal to ten per cent. of the whole amount of such bonds issued; and all taxes for interest on, and the redemption of such bonds shall be paid in cash only, and shall be kept by the county treasurer as a special fund, to be used in the payment of interest on and redemption of such bonds only; such taxes to be levied and collected as other taxes.

450. SEC. 23. When it shall appear to the board of county commissioners, upon examination of the books and accounts of the county treasurer, that there are sufficient funds in his hands  
32      to the credit of the redemption fund to pay in full the principal and accrued interest of any of such bonds, it shall be the duty of such board immediately to call in and pay as many of such bonds and accrued interest thereon as the funds ascertained to be on hand will liquidate, and said board shall thereupon cancel such redeemed bonds, and all uncanceled interest coupons issued therewith. The bonds shall be called in and paid in the order of their issuance, as nearly as may be practicable, and when it is desired to redeem any of such bonds by said board, they shall cause to be published for thirty days, in some newspaper at or nearest the county-seat of the county, a notice that certain county bonds (specifying the numbers and amounts) will be paid upon presentation, and at the expiration of such thirty days said bonds shall cease to bear interest.

451. SEC. 24. The bonds issued as heretofore provided, shall be signed by the chairman of the board of county commissioners, and attested by the clerk of the county, and bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose, in the order in which they are issued. Each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance; but no bond shall be of a less denomination than fifty dollars, and, if issued for a greater amount, then for some multiple of that sum; and the aggregate amount of such bonds issued shall not exceed the sum entered of record by the board of county commissioners, as required in section 21 of this act, and any bond issued in excess of said sum shall be null and void.

452. SEC. 25. The board of county commissioners shall have the right to sell any of such bonds, but no bond shall be sold unless for cash, and not then at a discount of more than 15 per cent. on its par value. The money arising from the sale of such bonds shall be forthwith used for the objects for which the debt was created, and for no other purpose whatever. When any such bonds or any coupons shall be redeemed, the board of county commissioners shall, in the presence of the clerk of said board or his deputy, cancel such bonds or coupons by writing the word "cancelled" on the face of such bonds or coupons, and said board shall make a record of the proceedings, stating what bonds or coupons were cancelled.

Indorsement: No. —. Public building bond. Lake county, Colorado. \$1,000. \$500. Interest ten per cent. per annum, payable April 1st, at Leadville. Bonds redeemable after July 31, 1890, and due July 31, 1900.

## EXHIBIT 2.

## Lake County Court-house Bond Coupons.

30

DENVER, COLO., January 7, 1896.

BOARD OF COUNTY COMMISSIONERS OF COUNTY OF			
Face.	Interest.	Total.	
1,500	1,465	2,965	10 %
1,100	1,074.33	2,174.33	10 %
3,000	2,630	5,630	10 %
1,100	964.33	2,064.33	10 %
2,240	1,708.66	3,908.66	10 %
1,100	854.33	1,954.33	10 %
3,000	2,639	6,539	10 %
1,100	744.33	1,844.33	10 %
3,000	1,799.20	6,699.20	8 %
1,100	567.47	1,667.47	8 %
3,000	1,487.20	5,387.20	8 %
\$25,960	\$15,873.85	\$39,773.85	

Computation of witness George W. Wright, of sum of money due on plaintiff's coupons put in evidence.

34 DANIEL E. PARKS, a witness produced on behalf of the plaintiff, solemnly affirmed and testified as follows :

Direct examination.

By H. B. JOHNSON, Esq. :

Mr. BRYANT: May a witness affirm, instead of swearing, in the Federal court ?

The COURT: Yes ; he may affirm.

Mr. BRYANT: I object to his affirming.

Objection overruled, and defendant by counsel duly excepts.

Q. You may state where you resided at the date of the issue of those bonds ?

A. Lake county, Colorado.

Q. You may state whether you are acquainted with the members of the board of county officers—acquainted with their signatures, whose names purport to be signed to those bonds and coupons ?

Defendant objected.

Q. And the seal of the county ?

Mr. BRYANT: I object, because not the best evidence.

Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

A. Yes, sir.

Q. You may state whether those bonds bear upon their face the genuine signatures of the officers of the county.

Defendant objected for the same reason last given. Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

A. Yes, sir ; the one that I have before me has the original signature of Joseph Pierce, chairman of the board, and is attested by Joseph H. Wells, county clerk, by E. T. Wolverton, deputy. That is Mr. Wolverton's and Mr. Pierce's handwriting, to the best of my knowledge and acquaintance with their writing. The coupon is signed by Mr. Pierce and in what I should judge to be his original handwriting, from what I know. As to the balance of the bonds, I have not examined them critically. If you desire my testimony as to each individual bond, I will examine the bonds. This bond is—

Q. From your examination of the bonds, were they all signed alike, and the coupons ?

35 A. I do not know whether they are or not. A portion of them may be signed by Mr. Joseph H. Wells himself. This is signed by Mr. Wolverton, his deputy.

Q. From your knowledge of this issue of bonds, can you state that they were issued and signed by the officers of the county at that time ?

A. Yes, sir ; I think so.

## Cross-examination.

By W. H. BRYANT, Esq. :

Q. Did you examine any of these coupons, Mr. Parks?

A. I have from first to last, but you must call my attention to them.

Q. Well, I will show you one of them. Is that the original signature of the officer, or just a lithograph?

A. I am inclined to think that is a lithograph, although I do not know. They are signed by Joseph Pearcel, I should judge, by his original signature, but possibly this is a lithograph. I am speaking of the bonds particularly.

Q. Just compare the coupons with the bonds and see if they are all identical with the lithograph—both of Pierce and Wells?

A. I am inclined to think those are lithograph signatures, but I have my doubts about it. They look to me like lithograph signatures on the coupons, but I am speaking of the original bonds—they are original signatures.

Q. You knew Mr. Wells?

A. I was personally acquainted with him for years. He was county clerk when I was county attorney up there.

Q. And you knew both their signatures, did you?

A. I knew Mr. Wells' signature as well as Mr. Wolverton's, his deputy, and Mr. Pierce's. I was acquainted with this man, Roberts, whose name appears in the bonds, who was the contractor who built the court-house. I desire to add right there that I understand Mr. Roberts is now a citizen of another State and I have not seen him for years.

Mr. BRYANT: I move that that be stricken out as immaterial, irrelevant and incompetent, what he understands.

The COURT: There is no occasion for that.

Mr. JOHNSON: I offer to show by witnesses that he knows it, and I think he does, that these bonds were issued and paid directly to Mr. Roberts for building the court-house, he being a contractor, and that he sold them.

The COURT: You may ask that.

## 36 Redirect examination.

By H. B. JOHNSON, Esq. :

Q. You may state whether or not those bonds were issued and delivered to Mr. Roberts for building the court-house.

Defendant objected because immaterial, improper and irrelevant, and not being the best evidence.

Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

A. Well, I will preface that by saying—

Q. No; answer the question, and then explain. You know whether you can answer the question or not.

A. I believe that was so, but I was not attorney for the county at that time, and therefore was not in a position to know positively.

Mr. BRYANT: I move that that be stricken out.

Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

Q. You may state whether from your knowledge, Mr. Roberts was the contractor who built the court-house.

A. Yes, sir.

Q. The bonds on their face are made payable to him, are they not?

A. This one is to L. E. Roberts; they are all alike; yes, sir. That has the county seal also.

Recross-examination.

By W. H. BRYANT, Esq.:

Q. Do you say they are all like that?

A. No; I do not say that they are all like that.

Q. Don't you know as a matter of fact, that they were not all issued to Mr. Roberts?

A. I have not examined them, and cannot say.

Q. How do you know Mr. Roberts was the contractor?

A. I know it from the fact that I was attorney of the county from about the 11th day of February, 1879, to the 15th day of April, 1880, when I resigned; I was reappointed the 23rd day of April, 1883, and served until the 1st of January, 1890; and I had more or less to do with the county business, and knew Mr. Roberts personally, and had my office close by and saw the court-house going up and saw the work and know all about it.

37 Mr. BRYANT: I move that the testimony be stricken out because not the best evidence of the fact that Mr. Roberts was the contractor.

Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

Mr. BRYANT: I should like to renew my objection to the coupons, on the ground that according to the testimony of Mr. Parks they are lithographed signatures of the officers of the county, and that none of them have been signed by the officers of the county.

Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

Mr. JOHNSON: I offer in evidence five bills of sale of these coupons and bonds, to Mr. Dudley.

Mr. BRYANT: I object to them, because they are not identified, the signatures or the execution of them. There is no evidence to show.

The COURT: Who are they executed by?

Mr. BRYANT: By various parties. Here is one by Joseph Standley, and here is one by Susan F. Jones, here is one (—) G. P. Bissell & Company, one by the Five Cent savings bank, Exeter, N. H., and here is one by the National savings bank. They are not identified.



Mr. PARKS: I would state to the court that I was served yesterday with notice from Mr. Bryant to produce these papers, and I have produced them. And the testimony of Mr. Dudley has been taken by the defendant on two occasions, and these papers have been identified by the testimony of Mr. Dudley in his deposition, and Mr. Dudley has stated that he would produce them here with his deposition. He has done so. They extorted from him the promise that he would produce them in connection with the deposition. They are here for that purpose, and we offer them in evidence in connection with the deposition had on notice to the other side.

Mr. JOHNSON: They are all in due form, under the seals of the corporations.

The COURT: We will see whether Mr. Dudley's deposition will identify them.

Mr. JOHNSON: We think it is sufficient to produce them here as the property of Mr. Dudley.

38 GEORGE W. WRIGHT recalled for further examination on behalf of the plaintiff testified as follows:

Direct examination.

By H. B. JOHNSON, Esq.:

Q. Are you acquainted with Mr. Joseph Standley?

A. Yes, sir.

Q. Do you know his signature?

A. Yes, sir.

Q. Is this his signature?

A. That is his signature.

Q. Do you know Susan F. Jones?

A. I do.

Q. Is that her signature?

A. Yes, sir.

Mr. BRYANT: That is not proof, and he is not competent to answer that question, from the mere fact that he knows these parties.

The COURT: He says he knows the signatures.

Q. Do you know the parties and know the signatures, Mr. Witness?

A. Yes, sir; I have known Standley for ten years, probably; and Mrs. Jones for five years; and am thoroughly acquainted with her signature and handwriting.

Q. Do you know anything about G. P. Bissell & Company?

A. I know the firm of Rollins & Company; had a great deal of business to do with them.

Q. You may examine those three bills of sale, the signatures of them.

A. This is one signed by the Union Five Cent savings bank, by its treasurer, Sarah C. Clark. I know Mrs. Clark's signature very well. While I was secretary and treasurer of the Rollins Investment Company I carried on extensive correspondence with her, and she

owned a great many securities. As to the Nassau savings bank, I know the signature of the treasurer, and of this other signed by David Crary, Jr., Jagger, and Hawley, and Hubbard; I know Mr. Hawley's signature and Mr. Crary's. I do not know the other.

Q. So those are the signatures of the officers of those corporations?

A. Yes, sir.

The Court: You may offer them.

To which ruling of the court the defendant by counsel then and there duly excepted.

39 Said bills of sale so received in evidence are in words and figures following:

#### EXHIBIT 3.

For value received I do hereby sell, assign, transfer and set over unto Harry H. Dudley of Concord, New Hampshire, the following described building bonds of the county of Lake, Colorado, viz: bonds of the denomination of \$1,000 each numbered from numbers fifty-five (55) to sixty-four (64) both numbers inclusive, and bonds of the denomination of \$500.00 each and numbered from 65 to 66 both numbers inclusive, said bonds being issued by the said county of Lake in A. D. 1880 by the Board of County Commissioners of the said County of Lake through its proper officers, bearing interest at the rate of 10 per cent. per annum and payable at the option of said county ten years after date but absolutely due and payable twenty years after date.

Dated December 5th, A. D. 1888.

SUSAN F. JONES,

*Executrix of the Estate of Walter H. Jones, Deceased.*

Indorsed: 55 to 64, 1,000. 65 to 66, 500. Exhibit 3.

#### EXHIBIT 4.

Know all men by these presents that we, David Creary Jr. of Hartford, J. H. Jagger of Hebron, Henry D. Hawley of Farmington and L. C. Hubbard of Berlin, all in the State of Connecticut, in consideration of the sum of five thousand three hundred eighty and  $\frac{66}{100}$  dollars paid by Harry H. Dudley of Concord in the county of Merrimack and State of New Hampshire, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said Harry H. Dudley the following goods and chattels, namely, seven bonds known as Lake county, Colorado public building bonds and described as follows: to wit, three bonds of the denomination of one thousand dollars each, numbered 80, 81 and 82, and four bonds of the denomination of five hundred dollars each, numbered 83, 84, 85 and 86; all of said bonds being due on July 31, 1900 and bearing interest at the rate of ten per centum per annum, payable annually.

Together with all the interest coupons attached to said bonds, the

first coupons on each bond being numbered No. 5 and the subsequent coupons of each bond being numbered consecutively up to and including No. 21.

To have and to hold all and singular the said goods and chattels to the said Harry H. Dudley and his executors, administrators, and assigns, to their own use and behoof forever, and we hereby  
40 covenant with the grantee that we are the lawful owners of the said goods and chattels; that they are free from all incumbrances, that we have good right to sell the same as aforesaid; and that we will warrant and defend the same against the lawful claims and demands of all persons and we have put the grantee in possession of the said property by delivering to him this deed in the name of the whole.

In witness whereof we the said David Crary, J. H. Jagger, Henry D. Hawley and L. C. Hubbard have hereunto set our hands and seal this 11th day of February in the year A. D. one thousand eight hundred and eighty-five.

DAVID CRARY, JR.

J. H. JAGGER.

HENRY D. HAWLEY.

L. C. HUBBARD.

[SEAL.]  
[SEAL.]  
[SEAL.]  
[SEAL.]

Signed, sealed, and delivered in presence of—

ALBERT H. OLINSKA.

IRVING W. HAVENS.

Indorsed: No. 80, 81, 82, 1,000. 83, 84, 85, 86, 500. G. P. Bis-  
sell & Co. to Harry H. Dudley. Bill of sale of personal property.

#### EXHIBIT 5.

Know all men by these presents that the Nashua Savings Bank, of Nashua, in the county of Hillsborough and State of New Hampshire, a corporation duly organized under the laws of the State of New Hampshire, in consideration of the sum of eleven thousand eight hundred sixty-nine and  $\frac{4}{100}$  dollars, paid by Harry H. Dudley of Concord, in the county of Merrimack and State aforesaid, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said Harry H. Dudley the following goods and chattels, namely, twenty unregistered coupon bonds of the issue known as Lake County, Colorado, public building bonds, numbered consecutively from No. 92 to No. 111, both inclusive, due July 31, 1900, of the denomination of five hundred dollars each and bearing interest at the rate of ten per centum per annum, payable annually.

Together with all the interest coupons originally attached to said bonds and unpaid, the first being numbered No. 4 and the subsequent coupons being numbered consecutively to and including No. 21.

To have and to hold all and singular the said goods and chattels to the said Harry H. Dudley and his executors, administrators and

41 assigns, to their own use and behoof forever. And said grantor hereby covenants with the grantee that it is the lawful owner of the said goods and chattels; that they are free from all incumbrances, that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons and it has put the grantee in possession of said property by delivering to him this deed in the name of the whole.

In witness whereof, the said Nashua savings bank by its treasurer duly authorized has hereunto set its hand and seal this 20th day of March, in the year A. D. one thousand eight hundred and eighty-five.

NASHUA SAVINGS BANK, [SEAL.]  
By VIRGIL C. GILMAN, *Treas.*

Signed, sealed and delivered in the presence of—

The words "originally" and "unpaid" being inserted before the signing hereof—

G. F. ANDREWS.

W. T. BAILEY.

Indorsed: 92 to 111. Nashua savings bank to Harry H. Dudley.  
Bill of sale of personal property.

#### EXHIBIT 6.

Know all men by these presents that the Union Five Cents Saving Bank of Exeter, in the county of Rockingham and State of New Hampshire, a corporation duly organized under the laws of said State, in consideration of the sum of ten thousand six hundred ninety-five dollars (\$10,695) paid by Harry G. Dudley of Concord in the county of Merrimack and State aforesaid the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said Harry H. Dudley the following goods and chattels, namely, eighteen unregistered coupon bonds of the issue known as Lake County, Colorado public building bonds and numbered consecutively from No. 112 to No. 129 both said numbers inclusive, due July 21, 1900, of the denomination of five hundred dollars each, and bearing interest at the rate of ten per cent. per annum, payable annually together with all the interest coupons originally attached to said bonds and unpaid, the first of said coupons being numbered No. 4 and the subsequent coupons being numbered consecutively to and including No. 21.

To have and to hold all and singular the said goods and chattels to the said Harry H. Dudley and his executors, administrators and assigns, to their own use and behoof forever.

42 said grantor hereby covenants with the grantee that it is the lawful owner of the said goods and chattels; that they are free from all incumbrances, that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons, and it has put the said grantee

in possession of said property by delivering to him this deed in the name of the whole.

In witness whereof the said Union Five Cents — bank by its treasurer duly authorized has hereunto set its hand and seal this 25th day of March in the year A. D. one thousand eight hundred and eighty-five.

UNION FIVE CENTS SAVING [SEAL.]  
BANK,

By its treasurer, SARAH C. CLARK.

Signed, sealed and delivered in presence of—

The words "originally" and "and unpaid" being interlined before the signing hereof—

HARRIET FRENCH.

Indorsed: For Lake Co. bds. 112 to 129. The Union Five Cents saving bank, Exeter, N. H., to Harry H. Dudley. Bill of sale of personal property.

#### EXHIBIT 7.

For value received I do hereby sell, assign, transfer and set over unto Harry H. Dudley of Concord New Hampshire the coupons cut from Lake County public building bonds Nos. 55 to 64 inclusive of one thousand dollars bonds and Nos. 65 & 66 of five hundred dollars bonds, viz: those falling due and payable in the years 1886, 1887, 1888, 1889, 1890 and 1891. And also coupons amounting to \$600 cut from bonds Nos. 55, 56, 57, 58, 59, 60 falling due in the year 1884.

In testimony whereof witness my hand.

SUSAN F. JONES.

#### EXHIBIT 8.

DENVER, COLO., Dec. 10th, 1884.

Know all men by these presents, that I, Joseph Standley of Denver, in the county of Arapahoe and State of Colorado, in consideration of the sum of fifteen thousand eight hundred eighty seven  $\frac{50}{100}$  dollars paid by Harry H. Dudley of Concord in the count of Merrimack and State of New Hampshire, the receipt of which is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said Harry H. Dudley the following goods and  
43 chattels, namely, eighteen unregistered coupon bonds known as Lake County, Colorado public building bonds, numbered and described as follows, to wit, twelve bonds of the denomination of one thousand dollars each numbered from No. 68 to 79 both inclusive and six bonds of the denomination of five hundred dollars each No. 67 and from 87 to 91 both inclusive all of said bonds bearing interest at the rate of ten per centum per annum payable annually and said bonds being due on July 31st, 1900, together with all interest coupons attached, to have and to hold all and singular the said goods and chattels to the said Harry H. Dudley and his

heirs, executors, administrators and assigns, to their own use and behoof forever.

JOSEPH STANDLEY. [SEAL].

Witness:

J. W. GAYNOR.

Indorsed: 1,000. 68 to 79 inclusive. 500. 67, 87 to 91 inclusive.

Cross-examination.

By W. H. BRYANT, Esq.:

Q. You say you know Mr. Crary's signature?

A. Yes, sir.

Q. How does he spell his name?

A. C-r-a-r-y.

Q. Is not that "Craig"? You must be mixed up, if you are familiar with his signature?

A. That is "Crary."

Q. Mr. Dudley is mistaken when he says it is "Craig," is he?

A. Yes, sir. It is "Crary."

Q. Where does Mr. Standley reside?

A. He resides in Denver.

Q. He is a citizen of Colorado, is he not?

A. Yes, sir.

Q. And has been for a great many years?

A. Yes, sir.

Q. How long have you known him?

A. About 10 years.

Q. And he has been a citizen of Colorado all that time?

A. Yes, sir.

Q. Mrs. Jones is a citizen of Colorado, is she not?

A. Yes, sir.

Q. How long have you known her?

A. Four or five years. I knew her when her husband died, or shortly after her husband died; she came to Denver to transact some business.

Q. Her husband was a citizen of Colorado?

A. Yes, sir.

44 Plaintiff objected because not cross-examination, and moved to have the testimony stricken out.

The Court: I will not strike it now. If you want to object to testimony, you must do it at the time.

To which ruling of the court the plaintiff by counsel then and there duly excepted.

Mr. BRYANT: We object to all these bills of sale as not being sufficiently proved, and we object especially to this bill of sale of Susan F. Jones, executrix of the estate of Walter H. Jones, deceased, because there is no authority shown here for her to execute an instrument of that kind; she being executrix she would have to have the authority of the county court or probate court of the county wherever she resided, to dispose of this personal property, and there is no such

authority shown. There is nothing here to show that she was the executrix of the estate.

Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted.

Mr. PARKS: We now call the attention of your honor and the jury to the deposition of E. W. Rollins, which I will read.

Said deposition so offered is in words and figures following:

(Caption.)

"EDWARD W. ROLLINS, a witness produced, sworn and examined on the part of the plaintiff herein, by and before Mr. Thomas H. Reynolds, a notary public within and for the county of Arapahoe, and State of Colorado, at his office in the city of Denver, in said county, testified as follows, to wit:

Direct examination.

By Mr. PARKS:

Q. State your name, age and residence.

A. Edward W. Rollins; forty-four years; Denver, Colorado.

Q. Are you acquainted with the parties to this suit?

A. Yes.

Q. Do you recollect the transaction relative to the purchase by you or your firm of the Lake County public building bonds, involved in this litigation?

A. Yes; that is, a portion of them.

Q. State what you know, as briefly as you can, about the purchase of these bonds; who purchased them, the price of them, etc.

A. I was doing business at the time the bonds were issued, as E. W. Rollins, and I bought Lake County public building bonds Nos. 67 and 83 to 129 inclusive, being 48 bonds of \$500 each, 45 amounting to \$24,000, and bonds Nos. 68 to 83 inclusive, being 15 bonds of \$1,000 each, amounting to \$15,000, and it is my recollection that I paid 92½ cents for them.

Q. When was that?

A. At the time the bonds were issued.

Q. Do you recollect when?

A. I bought them direct from the county.

Q. Do you recollect the date?

A. No; I do not know. It was when the bonds were issued, as I bought them right from the county, or the contractor. It was the contractor, now I come to think of it.

Q. What did you do with the bonds?

A. I sold them.

Q. To others?

A. Yes.

Q. For value?

A. Yes.

Q. At the time you purchased the bonds were the coupons all attached?

A. Yes.



Q. None of them were cut off?

A. No.

Q. None of them due?

A. None of them due.

Q. Who is the present owner of the bonds and overdue coupons?

A. Mr. H. H. Dudley.

Q. The plaintiff in this suit?

A. Yes.

Q. Was he such owner at the time of the commencement of this suit?

A. I think he was, yes.

Cross-examination.

By Mr. BRYANT:

Q. When did Mr. Dudley purchase the bonds?

A. I don't know exactly, but a number of years ago.

Q. Do you know how he purchased them?

A. No.

Q. Who did he purchase them from?

A. That I don't know.

Q. How do you know that he purchased them?

A. Because he sent the bonds to us and gave us the proper bills of sale to substantiate his claim.

Q. Do you know when he sent the bonds to you?

A. Years ago.

Q. For what purpose did he send them to you?

A. To bring suit on them.

46 Q. Have you got the letter that he sent them with?

A. No.

Q. Do you not file these letters that you receive?

A. Yes; generally.

Q. Do you not think that you have that letter on file?

A. Might have.

Q. Can you find it and attach it to this deposition?

A. Think I can.

Q. Do you know how Mr. Dudley purchased them?

A. No.

Q. Do you know whether they are owned by him individually or not?

A. I suppose they are.

Q. Do you know where he purchased them?

A. He purchased them of the various owners.

Q. Some were in the East?

A. Yes.

Q. The bonds were sold, some of them, to some trust company in Providence, were they not?

A. Not by me.

Q. To some savings (banks) there?

A. No.

Q. Mr. Dudley was at that time connected with you, or your firm or company?

A. Yes.

Q. And he is the present secretary of E. H. Rollins & Sons?

A. No.

Q. Or treasurer?

A. No.

Q. What office does he hold?

A. Director.

Q. Simply a director? Is it not a fact that he simply holds these bonds as trustee for the firm of E. H. Rollins & Sons?

A. No.

Q. Or for the real owners?

A. That I don't know anything about.

Q. Do you know whether he holds them simply for the purpose of collection?

A. No.

Q. You say he sent you bill of sale with these bonds?

A. Yes.

Q. Have you got that?

A. No, but it can be produced if you want it.

Q. Will you produce it and attach it to your deposition?

A. Yes.

Q. You say you purchased these bonds at the time they were issued?

A. Yes.

47 Q. Do you know whether it was the original series or a re-issue of them that you purchased?

Question objected to by Mr. Parks on the ground that it is based on the supposition that there was some other issue.

Q. You purchased the original issue? You purchased the bonds as they were issued?

A. I purchased the bonds the county issued to pay for their building.

Q. Were you living in Leadville at that time?

A. No, I lived here.

Q. Did you purchase them yourself direct or through an agent?

A. I went up there and made the negotiations personally. I do not recollect whether I took the bonds in Leadville or whether they were delivered to me here.

Q. You investigated the issue of bonds at that time?

A. Yes.

Q. And believed they were legal and bought them?

A. Yes.

Q. You made as full an investigation as you were able at that time?

A. Yes.

Q. How long did you or your firm hold the bonds?

A. A short time, I sold them just as soon as I could.

Q. Within what time, do you know?

A. I should say I sold them within ninety days.

Q. Within ninety days after you purchased them?

A. Yes.

Q. Do you know to whom you sold them?

A. I do not recollect, no.

Q. Do you know how the first coupons that were paid, were paid?  
Through your office?

A. Probably not.

Q. Were they not sent to you for collection?

A. I do not think they were.

Q. When did you next hear of the bonds?

A. We used to have some of the coupons for collection?

Q. Some of these coupons?

A. Yes.

Q. When did you next see them, if you know?

A. I think I next saw them when the suit was brought.

Q. When they were sent to you by Mr. Dudley?

A. Yes.

Q. He sent them to you by registered letter, or how?

A. I do not recollect.

48 Q. Are you positive that he mailed them or sent them to  
you?

A. Yes.

Q. Together with a bill of sale?

A. No.

Q. When did you get the bill of sale?

A. I don't know.

Q. Was it before or after the suit was brought?

A. I do not know.

Q. Was it lately, within the last six months?

A. I do not know.

Q. Would you say it was or was not?

A. I would not say anything at all.

Q. What is your best recollection?

A. That is something I know nothing about.

Q. You do not know when you got that?

A. I do not know when we got it; before the suit was brought.

Q. You say you got the bill of sale before the suit was brought?

A. No, I say we got the bonds before the suit was brought.

Q. You knew at that time that Mr. Dudley was the owner?

A. Yes.

Q. The only information you had was derived from his letter accompanying the bonds, stating that he was the owner of the bonds?

A. Yes.

Q. And you will try and get that letter and attach it to your deposition?

A. I do not know that he said in his letter that he owned the bonds. He simply sent them to us to be sued upon.

Q. Did he say anything in the letter as to who did own them?

A. No.

Q. Did he say anything about the owner of the bonds?

A. No.

Q. The bonds are payable to bearer?

A. To Roberts or bearer.

Q. He simply sent them to you with a request that suit be brought on them?

A. Yes.

Q. Did he say in his name?

A. Yes.

Q. Did he authorize you to employ attorneys?

A. Yes.

Q. And make arrangements to pay them?

A. Yes.

Q. Do you know whether he did pay them or not?

49 A. Yes.

Q. Do you know whether your firm paid the attorneys or not?

A. No.

Q. Have you?

A. No.

Q. You have paid none of the expenses of the litigation?

A. No.

Q. And the firm of E. H. Rollins & Sons, or any of its predecessors, have paid none of the expenses?

A. None.

Q. Did Mr. Dudley say anything about the expenses of the litigation?

A. He asked us to arrange with counsel to bring the suits.

(A.) And you employed Mr. Parks and Mr. Johnson?

A. Yes.

Q. Did you arrange with them about fees?

A. Yes.

Q. And told them that Mr. Dudley would pay them?

A. Yes.

Q. Told them that Mr. Dudley was responsible?

Q. Yes; they know Mr. Dudley.

Q. When would you give it as your best recollection as to when that bill of sale of these bonds came from Mr. Dudley?

A. I do not recollect.

Q. Well, would you say it was within the past year?

A. I do not recollect.

Q. Would not your best recollection be that it was within the past year?

A. No; I would not say definitely.

Q. Do you know what the bill of sale shows, who he purchased them from?

A. Yes; the bill of sale shows from whom he purchased them.

Q. Have you got that here in the office?

A. No.

Q. Do you know where it is?

A. Mr. Dudley has it.

Q. He still has the bill of sale?

A. Yes.

Q. Did you send it back to him?

A. Yes.

Q. When did you send it back to him?

A. I have forgotten how long ago that was. I think it was sent back to him. He sent for it when he wanted to make some deposition.

Q. Here within the past two or three months?

50

A. Yes.

Q. Did you write him a let-er at that time?

Objected to by Mr. Parks as immaterial.

(Q.) We wrote him a letter enclosing it.

Q. Is a copy of that letter in the office?

A. That I don't know.

Q. I wish you would find it if you have it and attach it to your deposition.

Objected to by Mr. Parks.

Q. Did you get a letter from Mr. Dudley requesting it to be sent?

Objected to by Mr. Parks as immaterial, incompetent and not proper cross-examination.

A. I think we did.

Q. Is that letter filed in the office?

Objected to by Mr. Parks.

Q. We would like to get a copy of that letter.

Objected to by Mr. Parks.

#### Redirect examination :

Q. What is the citizenship and residence of Mr. Dudley?

A. He is a citizen of the State of New Hampshire.

It is hereby stipulated and agreed by and between the parties plaintiff and defendant in the cause entitled in the foregoing deposition, as follows :

First. That said deposition was taken by and before Mr. Thomas H. Reynolds, a notary public within and for the county of Arapahoe and State of Colorado, on the 5th day of January, A. D. 1895, at his office in the city of Denver in said county of Arapahoe, upon due notice to the defendant's attorneys.

Second. That upon such examination the plaintiff appeared by Mr. D. E. Parks one of his attorney, and the defendant by Mr. W. H. Bryant, one of its attorneys.

Third. That the usual oath was administered to said Edward W. Rollins as a witness, that the evidence he should give in said cause as such witness, should be the truth, the whole truth and nothing but the truth, and thereupon the testimony and evidence of said Edward W. Rollins, as a witness, was had and taken as appears in the said deposition.

51 Fourth. That said deposition may be used and read in this the said cause, upon the trial thereof before said court, the said parties reserving to themselves such objections to the relevancy and competency of the evidence adduced, and such other objections not relating to the form and manner of taking such deposition, as they may choose to make thereto on said trial.

Dated this 27th day of December, A. D. 1895.

DAN'L E. PARKS, *Plaintiff's Attorney.*

THOMAS, HARTZELL, BRYANT & LEE,  
*Defendant's Attorney."*

Indorsed : No. 2758. In the circuit court. Harry H. Dudley vs. The Board of County Commissioners of the County of Lake, Colorado. Deposition of Mr. Edward W. Rollins. Filed January 7th, 1896. Robert Bailey, clerk, by Charles W. Bishop, deputy clerk. D. E. Parks, plaintiff's attorney, Denver, Colo.

Mr. PARKS : If the court please I find one of the powers of attorney is not here ; I have overlooked it in the papers in my office, but I will get it, and that I want to supply.

The COURT : They may go in with them provided they are all right.

Plaintiff rests.

Mr. BRYANT : We now ask the court that the jury be instructed to return a verdict for the defendant, upon the ground that the plaintiff has failed to prove his case as alleged in the complaint, and for the ground particularly stated in the objection to the introduction of these coupons and bonds in evidence. I think there were some four or five grounds, which I set forth in my objection at that time, and all of which I would like to have renewed and made a part of this objection. And also on the additional ground that under the statute of 1888, the Federal court is not given jurisdiction of the suits brought by assignees, except to foreign bills of exchange, unless the assignor has a right to bring a suit himself, and that they must allege and prove that the assignor or assignors of these bonds had a right to bring such a suit. Now I make that point, and I will be frank with your honor. Judge Hallett has ruled on that identical proposition and has held that the exception in the statute relates not only to foreign bills of exchange but also to negotiable instruments payable to bearer and issued by a corporation, which would bring the provisions of the exception within the terms

52 of these coupons, I presume, if a county is a corporation.

Judge Hallett held that way, but this point has never been passed upon by the Supreme Court of the United States or the circuit court of appeals. I believe there have been some different rulings announced in the other circuits. We make this for the purpose of preserving a record, but if your honor would like to hear arguments upon it we will produce such as we have been able to find.

The COURT : Your prayer for an instruction, Mr. Bryant, will be denied at this time. You may proceed with the case.

Mr. PARKS: As to the other question that he raises, I have the authorities that he refers to.

The COURT: I do not care for them. I will not pass upon that now.

To which denial by the court of the motion for a verdict for defendant, the defendant by counsel then and there duly excepted.

And thereupon the defendant to maintain the issues on its behalf, gave in evidence as follows, that is to say:

Mr. BRYANT: We have some depositions here, but I desire to introduce the sworn replication of plaintiff in this case, which admits the assessed valuation of the county for 1879 and 1880.

Mr. PARKS: That is all right.

Mr. BRYANT: Then it is admitted that the assessed valuation of the taxable property of Lake county for the year 1879 was \$3,485,628, and for the year 1880 it was \$11,126,489, for the year beginning the 1st of May, 1879, and for the year beginning the 1st of May, 1880. That is the way the assessor was required to return it. Now, I would like to introduce in evidence the depositions of Mr. Dudley, which have been taken.

Mr. PARKS: The defendant through its attorneys took the deposition of Mr. Dudley, which he now holds in his hand, and not being satisfied with that, took it a second time. I do not know whether they are bound to rely on the first deposition or not, but I desire to call the court's attention to that fact.

The COURT: You may rely on both. There may be some matters additional in the two depositions.

Mr. BRYANT: I desire to call the court's attention to the facts set forth in both of them. The first was taken on written interrogatories.

The COURT: You may read it.

53 And thereupon said deposition was read, and is in words and figures following:

(Commission, notice, and caption.)

*Interrogatories to be Propounded to Harry H. Dudley, a Witness to be Called on Behalf of the Defendant in the Above-entitled Cause.*

Int. 1. Please state your name, age, residence and occupation.

Int. 2. Are you the owner of any bonds issued by Lake county, Colorado?

Int. 3. Do you own any bonds of Lake county, Colorado, numbered 92 to 111 inclusive, bonds 83 to 86 inclusive, bonds 55 to 64 inclusive, 68 to 79 inclusive, and 80 to 82 inclusive, and bonds 65, 66, 67 and 87 to 91 inclusive and 83 to 86 inclusive, or any of them?

Int. 4. If in answer to the preceding interrogatory you state that you are the owner of any of said bonds or coupons cut therefrom please state when you purchased the same, from whom you purchased them and what consideration you paid therefor?



Int. 5. If you are not the owner of said bonds, or any coupons cut therefrom, please state what, if any, interest you have in the same.

Int. 6. Did you ever authorize any one in Colorado to invest your individual money in coupons or bonds of Lake county, and if you did give his name and state when you gave him that authority, the extent of the authority and how much money you have sent him to invest for you under the same.

Int. 7. When did you authorize the suit above-entitled suit of yourself *vs.* Lake county to be commenced?

Int. 8. Have you employed counsel in the above-entitled cause and are you paying them out of your individual money?

Int. 9. If you say you authorized suit to be commenced in your name please state under what circumstances you authorized it to be brought and whether or not the bond- or coupons upon which it was to be brought were your own individual property or were to be transferred to you simply for the purpose of bringing said suit.

Int. 10. If there is anything else you know concerning the controversy in the above-entitled cause between yourself and the County Commissioners of Lake County, Colorado, please state the same as fully and specifically as though you had been specially interrogated thereunto.

THOMAS, HARTZELL, BRYANT & LEE,

*Attorneys for Defendant.*

54 Int. 1. Please state your name, age, residence and occupation.

Ans. Harry H. Dudley; age, 35; Concord, N. H.; cashier Mechanics' national bank.

Int. 2. Are you the owner of any bonds issued by Lake county, Colorado?

Ans. Yes, I own certain Lake County bonds, which I hold under written bills of sale transferred to me from several different parties.

Int. 3. Do you own any bonds of Lake county, Colorado, numbered 92 to 111 inclusive, bonds 83 to 86 inclusive, bonds 55 to 64 inclusive, 68 to 79 inclusive, and 80 to 82 inclusive, and bonds 65, 66, 67 and 87 to 91 inclusive and 83 to 86 inclusive, or any of them?

Ans. I own, under the aforesaid bills of sale bonds mentioned in interrogatory 3 except it seems that numbers 83 to 86 inclusive have been mentioned twice.

Int. 4. If in answer to the preceding interrogatory you state that you are the owner of any of said bonds or coupons cut therefrom please state when you purchased the same, from whom you purchased them and what consideration you paid therefor.

Mr. PARKS: We object to interrogatory No. 4, because the question of consideration is immaterial.

The court overruled said objection, and to the ruling of the court the plaintiff by counsel then and there and at the time duly excepted.

Ans. In answer to interrogatory No. 4, I own by virtue of a written bill of sale from David Craig, Jr., J. H. Jagger, Henry D. Hawley and L. C. Hubbard bonds of Lake county, numbered 80, 81 and 82 for the sum of one thousand dollars each, and bonds numbered 83, 84, 85 and 86, for the sum of five hundred dollars each, together with all interest coupons commencing with No. 5 and all subsequent coupons of each bond. The consideration in said bill of sale being five thousand three hundred and eighty and fifty-six one-hundredths dollars. I also own by virtue of a written bill of sale from Joseph Standley, dated December 10th, 1884, bonds of Lake county of the denomination of one thousand dollars each, numbered from 68 to 79 both inclusive and six bonds of the denomination of five hundred dollars each numbered 67 and 87 to 91 both inclusive with all interest coupons attached. The consideration in said bill of sale being fifteen thousand eight hundred eighty-seven and fifty one-hundredths dollars. I also own by virtue of a written bill of sale from Susan F. Jones, executrix of the estate of Walter H. Jones, deceased, dated December 5, 1888, Lake County bonds of the denomination of one thousand dollars each numbered from No. 55 to 64 both inclusive and bonds of the denomination of five hundred dollars each and numbered from 65 to 66 both inclusive. The consideration named in said bill of sale is for value received. I also own bonds of Lake county, by virtue of a written bill of sale from the Nashua savings bank, dated March 20, 1885, numbered 92 to 111 both inclusive of the denomination of five hundred dollars each, together with all the interest coupons originally attached to said bonds and unpaid, the first being numbered No. 4 and the subsequent coupons being numbered consecutively to and including No. 21. The consideration named in said bill of sale being eleven thousand eight hundred sixty-nine and forty-five hundredths dollars. I also own bond of Lake county, by virtue of a written bill of sale from the Union Five-Cent Savings Bank of Exeter, N. H., bonds of Lake county numbered consecutively from 112 to 129 both inclusive of the denomination of five hundred dollars each together with all interest coupons originally attached to said bonds and unpaid, the first of said coupons being numbered No. 4 and the subsequent coupons being consecutively to and including No. 21. The consideration named in said bill of sale being ten thousand six hundred ninety-five dollars. I also hold a bill of sale and assignment from Susan F. Jones coupons cut from Lake County public building bonds Nos. 55 to 64 inclusive of the denomination of one thousand dollars and Nos. 65 and 66 of the denomination of five hundred dollars bonds, namely those falling due and payable in the years 1886, 1887, 1888, 1889, 1890 and 1891; and also coupons amounting to six hundred dollars cut from bonds Nos. 55, 56, 57, 58, 59 and 60, falling due in the year 1884.

Int. 5. If you are not the owner of said bonds, or any coupons cut therefrom, please state what, if any, interest you have in the same?

Ans. I have stated my interest in the bonds in my answer to interrogatory 4.

Int. 6. Did you ever authorize any one in Colorado to invest your individual money in coupons or bonds of Lake county, and if you did give his name and state when you gave him that authority, the extent of the authority and how much money you have sent him to invest for you under the same?

Ans. I did not give any one in Colorado authority to invest my individual means in Lake County bonds.

Int. 7. When did you authorize the suit above entitled suit of yourself *vs.* Lake County to be commenced?

Ans. I cannot name any date. E. H. Rollins & Sons have looked after these matters for me.

Int. 8. Have you employed counsel in the above-entitled cause and are you paying them out of your individual money?

56 Ans. I have not personally employed counsel in the above-entitled cause because, as I have already stated, E. H. Rollins & Sons have looked after these matters for me and, as I understand it, they have employed counsel in these suits.

Int. 9. If you say you authorized suit to be commenced in your name please state under what circumstances you authorized it to be brought and whether or not the bond or coupons upon which it was to be brought were your own individual property or were to be transferred to you simply for the purpose of bringing said suit?

Ans. I understand said bonds and coupons were transferred to me, as aforesaid, for the purpose of bringing a suit against the county to make them pay the honest debts of the (company).

Int. 10. If there is anything else you know concerning the controversy in the above-entitled cause between yourself and the County Commissioners of Lake County, Colorado, please state the same as fully and specifically as though you had been specially interrogated thereunto?

Ans. There is nothing further to state.

HARRY H. DUDLEY.

(Certificate of officer taking deposition. Subpcena.)

Indorsed: 2758. U. S. circuit court. H. H. Dudley *vs.* Lake County. Deposition of H. H. Dudley for def't. Opened, published and filed Jan. 21, 1895. Robert Bailey, clerk U. S. circuit court.

Mr. BRYANT: Now, that one was taken on written interrogatories. Now here is one on oral interrogatories.

Said deposition now read is in words and (and) figures following:

*"Deposition Taken Before Judge Silsby, Concord, N. H., March 2, 1895.*

C. S. THOMAS, Esq., counsel for the defendant:

I, Harry H. Dudley, of Concord, in the county of Merrimack and State of New Hampshire, on oath depose and say in answer to the following interrogatories:

Int. 1. Mr. Dudley, you are the plaintiff in this case, I presume?

Ans. Yes, sir.

Int. 2. Did you give a deposition in this case for the defendant in answer to certain interrogatories before Judge Silsby, the judge of probate for Merrimack county, New Hampshire, on or about the 14th day of January, 1895?

Ans. I did.

57 Int. 3. In answer to interrogatory 4 of that deposition you say among other things that you own by virtue of the written bill of sale from David Craig, J. H. Jaeger, Henry D. Hawley and L. C. Hubbard bonds of Lake county, Nos. 80/81, and 82, for the sum of \$1,000 each, and bonds Nos. 83, 84, 85 and 86, for the sum of \$500 each, together with all interest coupons commencing with No. 5, and all subsequent coupons of each bond. What is the date of that bill of sale?

Ans. I do not remember the date now. I think it was February 11, 1885.

Int. 4. Where is that bill of sale?

Ans. I think it is in Denver.

Int. 5. In whose custody is it at Denver?

Ans. Really I could not tell

Int. 6. In whose custody was it when you last knew anything about it?

Ans. I think it was sent to E. H. Rollins & Sons, or Mr. E. W. Rollins. I do not remember which.

Int. 7. By whom was it sent?

Ans. Sent by me

Int. 8. Is that bill of sale made to you?

Ans. Yes, sir.

Int. 9. When was it that you sent it to Denver?

Ans. I should think it was during the month of January.

Int. 10. In what year?

Ans. 1895.

Int. 11. Why was it sent in January, 1895?

Objected to as immaterial and irrelevant.

Ans. What was the question, why it was sent then? I had no further use for it here particularly.

Int. 12. Was it sent before or after your previous deposition?

Ans. I am not positive about that matter, but I should say it was sent afterward. I am quite sure it was.

Int. 13. You also say in the answer to which I have referred, that the consideration in the said bill of sale was \$5,380.56. Did you pay that consideration for the bonds mentioned in the bill of sale?

Ans. No, I did not.

Int. 14. Did you pay any part of it?

Ans. No, sir.

Int. 15. Why was that bill of sale made to you, Mr. Dudley?

Ans. I think I have answered that in some interrogatory here, my answer to Int. 9 in the deposition I gave before in this case.

58 Int. 16. Are not the bonds mentioned in the said bill of sale, together with the coupons, still owned in fact by the grantors named in said bill of sale?

Ans. Not as I understand the bill of sale. I understand I am absolute owner.

Int. 17. Was not that bill of sale made to you for the purpose of enabling you to prosecute this claim upon them?

Ans. My answer to Int. 9 in my former deposition answers that also.

Int. 18. I repeat the question and ask for a categorical answer.

Ans. I cannot more fully answer the question than I have in answer to Int. 9, former deposition.

Int. 19. Do you decline to answer it, yes or no?

Ans. I think this answer is sufficient.

Int. 20. If you are successful in the suit brought upon the coupons heretofore attached to the bonds mentioned in said bill of sale, do you not intend to pay the amount of those coupons so recovered to the grantors in said bill of sale, less any legitimate expenses attendant upon the prosecution of this case?

Ans. Yes. My understanding in the matter would be something might be paid them.

Int. 21. Is there something to be paid them different from the amount involved in the suit represented by the coupons cut from said bonds?

Ans. I should think there was.

Int. 22. In what respect is the difference?

Ans. They would not be paid the full amount.

Int. 23. What deduction would you make?

Ans. I do not know just what deduction would be made.

Int. 24. When you took this bill of sale, did you execute some sort of a written statement back to the grantors of said bill of sale?

Ans. No, sir.

Int. 25. Did you make a verbal agreement at the time with them or any of them?

Ans. No, sir.

Int. 26. Were you present when the bill of sale was drawn?

Ans. No, sir.

Int. 27. Where was it drawn?

Ans. My impression is that it was drawn at Hartford, Conn., this particular one that you refer to.

Int. 28. Yes. Who represented you at the drawing of the bill of sale?

Ans. I have no knowledge of being represented there.

Int. 29. When did you first know that such bill of sale had actual existence?

59 Ans. When I received it.

Int. 30. When was that?

Ans. I cannot tell the date. It was in the year 1894.

Int. 31. Then you knew nothing of it until some nine years after it was made?

Ans. That was the first I knew of it, the year 1894.

Int. 32. In the answer already referred to, you say that all interest

coupons commencing with No. 5, and all subsequent coupons of each bond were transferred by the bill of sale.

(Mr. SARGENT: You say "in the answer already referred to." There has been another answer, No. 9.)

— In answer to Int. 4 already referred to, you say that the bill of sale conveyed—

(Mr. SARGENT: You say "in answer to No. 4 already referred to." There is a No. 4 in this one too. Would not you say "in your former deposition?")

— Yes; in your former deposition, you say that all interest coupons commencing with No. 5, and all subsequent coupons of each bond were transferred back. Why was there not included in this suit the coupons numbered 5 to said bonds, as well as those succeeding it up to and including those for 1891?

(That is objected to on the ground that it is immaterial and irrelevant.)

Ans. Do I understand, Mr. Thomas, you mean the coupons before No. 5?

Int. 33. No; coupon No. 5.

Ans. My answer was, commencing with five and all subsequent coupons. I should understand that did include coupon No. 5.

Int. 34. Is your understanding of the present suit that it includes coupon No. 5 to bonds 80, 81, 82, 83, 84, 85, 86?

Ans. I am not sure as to that point, but from that written bill of sale I should interpret it included No. 5.

Int. 35. If, as a matter of fact, coupon No. 5 of the bonds mentioned in my last question are not included in this suit, would you still say that coupon No. 5 was included in said bill of sale?

Ans. I do not quite understand that question. What I claim is that as I understand it, coupon No. 5 is included in the bill of sale?

Int. 36. Whether it is in the suit or not, you do not know?

Ans. I suppose it is in the suit.

60 Int. 37. In your answer to Int. 4 of your former deposition, you also say that you own by virtue of the written bill of sale from Joseph Stanley, dated December 10, 1884, Lake County bonds from 68 to 79 inclusive, No. 67, and from 87 to 91 inclusive with all interest coupons attached. Where is that bill of sale?

Ans. That is in Denver, I think.

Int. 38. Did you send that to Denver with the other?

Ans. I am quite sure that I did.

Int. 39. When did you first know of the existence of the bill of sale?

Ans. I think it was in the year 1894.

Int. 40. Some ten years after it was made?

Ans. Do you want me to answer that?

(—.) Yes.

Ans. I received it as I have stated heretofore, that was the first I knew of it.

Int. 41. Are you personally acquainted with Joseph Stanley ?

Ans. I am not ; no, sir.

Int. 42. Did you ever meet him ?

Ans. Don't remember that I ever met him.

Int. 43. Did you at any time ever pay him \$15,887.50 for the bonds mentioned in his bill of sale to you ?

Ans. No, sir.

Int. 44. Did you ever pay him any part of it ?

Ans. No, sir.

Int. 45. Is it not a fact that Mr. Stanley still owns these bonds ?

Ans. I have answered in a former deposition that I hold a bill of sale of certain bonds of Joseph Stanley.

Int. 46. Do you refuse to answer the last question I asked you, yes or no ?

Ans. I prefer to answer it as I have stated above.

Int. 47. If you should recover in this suit, are not the amounts represented by the coupons cut from the bonds mentioned in the Stanley bill of sale to be paid to Joseph Stanley less the expenses of this suit ?

Ans. I could not answer that definitely.

Int. 48. Why not ?

Ans. Because I haven't enough knowledge of the matter to answer it definitely.

Int. 49. You have no knowledge of it at all personally, have you ?

Ans. My understanding of the matter would be, Joseph Stanley would have a certain amount of money if the suit was won.

61 Int. 50. Was not the bill of sale drawn in Denver—the Stanley bill of sale ?

Ans. I have no actual knowledge where it was drawn.

Int. 51. Do you know who had the bill of sale before it was sent on to you in 1894 ?

Ans. I do not think I have any actual knowledge.

Int. 52. Did you have any sort of knowledge ?

Ans. Yes. I imagined it came from Rollins & Son.

Int. 53. By letter ?

Ans. It came through the mail.

Int. 54. Have you the letter now ?

Ans. I do not think that I have, no, sir.

Int. 55. What did you do with it ?

(Objected to on the ground that the witness has not received any letter in connection with it, simply that the bill of sale came through the mail.)

Ans. I could not swear that it was.

Int. 56. It came in December of 1894, did it not ?

Ans. I should say it did.

Int. 57. Were not all these bills of sale sent to you, Mr. Dudley, after you were notified that the commission had been issued to take your deposition on written interrogatories ?

Ans. No, sir.



Int. 58. How long before that time was it that you received them?

Ans. I should say that I had received some of these bills of sale early in the fall of 1894.

Int. 59. Will you state why they were sent to you early in the fall of 1894?

(Objected to as immaterial and irrelevant.)

Ans. I have no knowledge why they were sent, only that they properly belonged in my possession at that time.

Int. 60. But at the time you received them you had no knowledge that such bills of sale were in existence?

(Objected to as immaterial and irrelevant.)

Ans. I had not seen them before.

Int. 61. Were they not sent to you about or immediately after the time that your deposition was taken in the case entitled "H. H. Dudley vs. The Board of County Commissioners (in) the County of Gunnison, pending in the United States district court for the district of Colorado"?

(Objected to on the same grounds.)

62 Ans. I do not just remember that date when the deposition was given, but I should have said that part of these bills of sale I had before that time, perhaps a month or more, I do not know but several months. Along in November, was it?

Int. 62. I thought I had the date, but I have not. In your answer to Int. 4 in your former deposition you also say that you own by virtue of the bill of sale from Susan F. Jones, executrix, dated December 5th, 1888, Lake County bonds Nos. 55 to 64 inclusive, and 65 and 66 inclusive. When did you first know of the existence of the bill of sale?

Ans. I do not remember when that was received.

Int. 63. Was it before or after the others?

Ans. I could not say definitely.

Int. 64. Do you know Susan F. Jones?

Ans. No, sir.

Int. 65. Were you present when that bill of sale was drawn?

Ans. No, sir.

Int. 66. Where is it now?

Ans. I think that is in Denver.

Int. 67. Sent with the others?

Ans. I am quite sure it was, yes.

Int. 68. What did you pay for that bill of sale, Mr. Dudley?

Ans. For consideration not named in the bill of sale.

Int. 69. That does not answer my question. What did you pay for it?

Ans. I do not remember as I paid anything.

Int. 70. Do you remember that you did not pay anything?

Ans. It is my impression that I did not.

Int. 71. Were you present when it was drawn?

Ans. No, sir.

Int. 72. In the event you recover a judgment in this case, are not the amounts of the coupons belonging to the bonds mentioned in the bill of sale from Mrs. Jones, to be paid Mrs. Jones less her proportion of (*waging*) the case?

Ans. I could not state definitely about that.

Int. 73. Why?

Ans. For the reason that I have answered similar questions above.

Int. 74. Going back to the bonds of Mr. Stanley, I will ask you one or two other questions. Is Mr. Stanley a citizen of Colorado?

Ans. I think he is.

Int. 75. Now why did you not include in this case the coupons belonging to the Stanley bonds for 84, 85 and 86, and the coupons to bonds 68 to 72, included in the Stanley bill of sale for 1888, and the coupons on 67, 87-91 for 1884-'5?

Ans. If they were not included I do not know why they were not.

63 Int. 76. Is Mrs. Jones a citizen of the State of Colorado?

Ans. I think she is.

Int. 77. Were not those bonds of Stanley and Jones assigned to you in order that you might as a citizen of another State bring suit upon them and upon the coupons belonging to them in the Federal court in Colorado?

Ans. I should answer that by referring to my answer in former deposition to Int. 9.

Int. 78. Do you decline to answer the question, yes or no?

Ans. I do.

Int. 79. Is it because to answer yes or no would be untrue?

(The question now asked has been sufficiently answered in the answer to the previous question, and the witness ought not to be enquired of further.)

Int. 80. The answer in the former deposition is evasive, or I would not be here. At least, I think it is.

(Counsel for the defendant desires to object, because under the rule governing the taking of depositions like this, objections are made to be preserved in the record, and the court in which the case in which the deposition is taken is pending is alone to determine upon the pertinency or immateriality of the question and the right of the witness to refuse to answer.)

Int. 81. In your answer to Int. 4 of your former deposition, you also say that you own bonds of Lake county by the written bill of sale from the Nashua savings bank, numbered 92-111 both inclusive, together with all coupons originally attached and unpaid. You also say that the consideration for the said bill of sale is \$11,689.45. Did you pay any part of that, Mr. Dudley?

Ans. No, sir.

Int. 82. Were you present when the bill of sale was drawn?

Ans. No, sir.

Int. 83. When did you first know that there was such a bill of sale?

Ans. As soon as I received it, in the year 1894.

Int. 84. In the event of a recovery in this case, are not the amounts of the coupons belonging to the said bonds to be paid over to the Nashua savings bank less their proportion of the expense of this litigation?

(Objected to as immaterial and irrelevant.)

Ans. I do not know how much will be paid them.

Int. 85. Do you know anything about it?

Ans. Indirectly, yes.

Int. 86. Do you mean by that, you have some hearsay evidence upon it?

64 Ans. Yes. I have an impression from hearsay that the bank would have some equivalent for these bonds if suit was won.

Int. 87. You say here that you own bonds of Lake county by virtue of a bill of sale from the Union Five-Cent Savings Bank of Exeter, numbered 112-129, inclusive, together with all coupons, the first being No. 4, and the subsequent ones being consecutive up to and including No. 21. What is the date of that bill of sale?

Ans. I think that was dated March 25, 1885.

Int. 88. Were you present when it was made?

Ans. No, sir.

Int. 89. When did you first know of its existence?

Ans. In the year 1894.

Int. 90. At the time that you were informed of the existence of the others?

Ans. Nearly at the same time I should say.

Int. 91. Did you pay the Bank of Exeter \$10,695, or any other sum for the bonds mentioned in that bill of sale?

Ans. No, sir.

Int. 92. You also say in the same answer to the same interrogatory in your former deposition that you hold a bill of sale and assignment from Susan F. Jones for coupons Nos. 55 to 64, and Nos. 65 to 66 for the years 1886, '7, '8, 1891, also coupons amounting to \$600 from bonds 55-6-7-8-9-60 falling due in the year 1894. What is the date of that bill of sale and assignment?

Ans. I could not tell.

Int. 93. When did you first know of its existence?

Ans. I should say in 1894.

Int. 94. Did you pay anything for it?

Ans. No, sir.

Int. 95. Now why did you not include in this suit coupons to bonds 55 to 65 inclusive for 1891, coupons to bonds 65-66 for 1891, and coupons to bonds 112-129 inclusive for 1884-5-6-7-8?

Ans. If they were not included, I do not know why they were not.

Int. 96. Where are the coupons to which the last questions refer?

(Objected to as immaterial and irrelevant.)

Ans. I don't think I could tell.

Int. 97. Did you ever have in your possession any of the coupons or any of the bonds to which this examination has thus far been directed?

(Objected to as immaterial and irrelevant.)

The Court: He may answer the question.

65 To which ruling of the court the plaintiff by counsel then and there duly excepted.

Ans. Strictly speaking, I don't think I ever had them in my own possession. I have seen some of the bonds and handled them, had them in a safe.

Int. 98. Where?

Ans. In Boston.

Int. 99. When?

Ans. Well, I should say in the year 1893.

Int. 100. But that was before you knew they had been assigned to you by bill of sale, was it not?

Ans. I was really handling them as agent for other parties.

Int. 101. Who were the other parties you were handling them as agent for?

Ans. I don't know as I was exactly an agent. I was an officer of another company. They came into our hands.

Int. 102. What was that company?

Ans. E. H. Rollins & Sons.

Int. 103. Were you a stockholder of that company?

Ans. Yes.

Int. 104. Are you now?

Ans. Yes, sir.

Int. 105. Is not that the only interest which you have in these bonds or any of them, your interest as a stockholder in the firm of E. H. Rollins & Sons?

Ans. Yes, probably it is.

Int. 106. When did you first know that this suit was pending?

Ans. I would like to correct my answer to that last.

(—) Certainly.

Ans. My only *request*, excepting as the interest I have in the bills of sale, as they show.

Int. 107. When did you first know of the pendency of this suit in your name?

Ans. In the year 1894.

Int. 108. Have you ever employed counsel to bring this suit, paid any of the costs of the suit, or made any disbursements with reference to it whatever?

(Objected to as immaterial and irrelevant.)

Ans. I refer to my answer to Int. 7 in the former deposition.

Int. 109. Do you decline to answer the last interrogatory categorically?

Ans. No, I do not decline to.

Int. 110. Then please do so, and for that purpose I will repeat the question. Have you ever paid out any money for the employment of counsel, for the costs in this case, or for any other disbursements or made any other disbursements of money concerning it?

Ans. E. H. Rollins & Sons of Denver have looked after these matters for me.

Int. 111. Is the answer which you have just made to the last question, one which you read from previous interrogatory in this case?

Ans. Yes.

Int. 112. Do you do it by instruction of counsel?

Ans. No.

Int. 113. Why do you refuse then to answer the question, yes or no?

(Objected to on the ground that he has not refused, and has expressly said he does not refuse.)

Int. 113. I understand that, but he does not just the same. The witness says he is willing to answer categorically. I ask that he be required to answer that question categorically. Have you paid any money for counsel or for costs, or made any disbursements in the case in which this (*disposition*) is being taken?

Ans. No. E. H. Rollins & Sons of Denver, have looked after these matters for me.

Int. 114. When you gave your former deposition in this case to written interrogatories, Mr. Dudley, did you have counsel present?

Ans. Yes, sir.

Int. 115. Were the answers which you made to the questions in that interrogatory prepared?

Ans. I think they were.

Int. 116. Who prepared them?

Ans. I prepared them with help of counsel.

Int. 117. About how much time did you and counsel give to their preparation?

(Objected to as immaterial and irrelevant.)

Ans. It was a short time comparatively. I do not remember. An hour or two perhaps.

Int. 118. Were they prepared in writing?

Ans. Yes, sir.

Int. 119. And then did you read the answers thus prepared when you came before the commissioner to answer the interrogatories?

Ans. As I remember I did.

Int. 120. Do you know a man named G. W. Wright who was formerly in the employ of E. H. Rollins & Sons?

(Objected to as immaterial and irrelevant.)

67 Ans. You mean George W. Wright?

(—.) Yes.

Ans. Yes, sir; I know him.

Int. 121. Were you ever in Denver?

Ans. Yes.

Int. 122. When?

(Objected to as immaterial and irrelevant.)

Ans. I don't remember the year, but I should say it was in 1891.

Int. 123. Were you ever there before or after?

(Objected to on same ground.)

Ans. No, sir.

Int. 124. Did you on that occasion tell Mr. G. W. Wright to buy for you the coupons which form the subject of this suit?

(Objected to on same ground.)

Ans. No, sir; I didn't.

Int. 125. Did you ever instruct him while there or in writing, to buy these coupons for you, or any of them?

(Objected to as before.)

Ans. I don't remember that I did.

Int. 126. Do you know anything of the firm of George B. Bissell & Co. of Hartford?

(Objected to on same ground.)

Ans. I know they are bankers in Hartford. Further I don't know anything about them.

Int. 127. Do not the bonds numbered 81-2-3-4-5-6 and the coupons cut therefrom, belong to George B. Bissell & Co., of Hartford?

Ans. I don't know.

Cross-examination.

By H. G. SARGENT, counsel for plaintiff:

Int. 128. You have been asked if you knew why certain coupons which have been specified by counsel in several different questions, were not included in the present suit. Have you any knowledge that any of said coupons enquired about are or are not included in said suit?

Ans. No. I have no knowledge of any coupons being included, except what I have stated in my former deposition.

Int. 129. But the questions which have been put to you by counsel upon the other side have assumed that certain coupons  
68 he has enquired about were not included in the present suit. Do you mean to be understood that you know that they are or are not actually described in the papers in the present suit?

Ans. I do not know whether they are included or not.

Int. 130. In your answer to Int. 4 in your former deposition you have referred to certain bonds which you own by virtue of certain bills of sale therein described. Have you given to any of said parties who have made said bills of sale to you any obligation either in

writing or verbally to return them anything if coupons or bonds are collected?

Ans. No, sir.

Int. 131. State whether or not David Craig, J. H. Jagger, Henry D. Holley, L. C. Hubbard, the Nashua savings bank, Union Five Cent Savings Bank of Exeter, N. H., referred to in your answer to Int. 4, or any of them, are citizens or residents of the State of Colorado.

Ans. No, I don't understand that they are.

HARRY H. DUDLEY.

(Subpœna. Certificate of officer taking deposition.)

Indorsed: 2758. U. S. circuit court. Harry H. Dudley vs. Lake County. Deposition of H. H. Dudley for def't. Opened, published and filed Jan. 4, 1896. Robert Bailey, clerk.

2 P. M.

Mr. BRYANT: For the purpose of saving time, we propose now to introduce in evidence the amount of indebtedness of Lake county at the time these bonds were issued, upon the 31st day of July, 1880; and also that of the preceding fall when the bonds were voted for by the people of the county. I will introduce the books of the county clerk and recorder for the purpose of proving those facts. Now this evidence was objected to at the last trial, and some of it, after argument before your honor, was sustained, and some of it was excluded. I suppose they will make the same objections now. If they do we want to be heard. I do not suppose they will object to the method of proving it, but that is what we offer to prove now.

Mr. PARKS: Our objection before went to the character of the proof, and it was shown before your honor on the other trial that it appeared that the defendant desired to prove this indebtedness by a record which we objected to, and which we contended did not come up to the requirements of the statute, and on that theory your honor excluded it; and of course we make the same objection now; and I suggested to counsel that he might follow the proceedings of the other trial; but I do not know as that can be done.

Mr. BRYANT: One difference from that trial is that we have Mr. Newell here with the original books of the county.

69 Mr. JOHNSON: Is this: Your honor may not remember the proceedings in the former trial, but there is a provision of our statutes, passed upon in the Sutliff case, that the boards of county commissioners shall make over their signatures a semi-annual statement of the outstanding indebtedness of the county, and that that shall be recorded in a book kept for that purpose only, and shall be published in some newspaper. Now if there was any such record as that kept, we have no objection to its introduction, but the court held on the former trial that the general account books and records of the county could not be introduced for the purpose of bringing the case within the rule in the Sutliff case, requiring a purchaser of bonds to take notice of the outstanding indebtedness which was not shown in such semi-annual statement.

Mr. BRYANT: There are two differences between this trial and the



other one. At that trial we did not have the county clerk and recorder here for the purpose of showing that the book which we offer in evidence and which I hold in my hand, was the very one which was kept by the county. The fact is that now we have what is called the county clerk's account book, and while the title is not identical with that set forth in the statute, it contains all the subject-matter which the statute requires to go into it, and makes up a semi-annual statement. In addition to that, at this hearing we have the original papers, the Herald-Chronicle, showing the publication of this statement and that public notice was given of it. We think there is a difference between that hearing and this, and in addition to that there is another matter which was not called to your honor's attention at that hearing, but which we would like to call to your attention now, and that is that these bonds do not recite upon their face that the constitutional limitation has not been reached; and then aside from all that there is the additional evidence which we have introduced in this case, as to Mr. Dudley's ownership of these bonds. The testimony which we have introduced shows that he is not a *bona fide* purchaser for value, and therefore he cannot come within the rule of an innocent purchaser. I think we are entitled to show any fact which will tend to overthrow the validity of these bonds. In other words, if he was under your honor's ruling before, perhaps if he was a *bona fide* and innocent purchaser of these bonds for value, and the county officers having failed to keep this book as the statute required, he would not be required to take notice of it, but if he is not a *bona fide* holder, and had notice that the issue was not within the constitutional limit, no matter how it was shown that that would be an equity between him and the person who received the bonds and we would be entitled to produce proof of it, and under those circumstances we are entitled to introduce these proofs in evidence.

The COURT: I think, under the rule as announced in the case of *National Life Ins. Co. vs. Board of Education*, decided by our circuit court of appeals since the former trial, that the ruling of the court excluding this testimony at that time was wrong; I think the testimony will have to be admitted.

Mr. PARKS: Counsel only referred to the case in the 62nd Federal Reporter—

The COURT: Still, as to the formalities required by the statute, viz: the regularity of the election, you cannot go into that; that is recited in the bond; but you may go into the question of exceeding the constitutional limit, because there is nothing in the bond which would cause a purchaser to rely upon it in any way that he is bound under this decision to make an examination.

Mr. PARKS: We probably understand that to be so, but the character of the proof is what we discussed before, and that is the question here.

The COURT: Mr. Bryant offers now to improve the character of the proof materially. This case takes very broad grounds. I will let the court of appeals decide that question and will admit the proof.

To which ruling of the court the plaintiff by counsel then and there duly excepted.

J. W. NEWELL, a witness produced, sworn and examined on behalf of the defendant, testified as follows:

Direct examination.

By W. H. BRYANT, Esq.:

Q. Where do you reside, Mr. Newell?

A. Lake county, Colorado; in Leadville.

Q. And what is your business?

A. I am at present county clerk of Lake county.

Q. How long have you been county clerk of the county?

A. Nearly two years.

Q. Your term expires in a few days?

A. Yes, sir, on the 13th.

Q. Are you familiar with the records of Lake county?

A. Yes, sir.

Q. I hand you this book and ask you what it is?

A. It is the county clerk's account book.

Q. When does that commence, Mr. Newell?

71 A. It commences—I do not know the exact date; about 1880, I think.

Q. Well, can you see from the book itself?

A. Along the first of 1880.

Plaintiff objected because the book will speak for itself.

Q. Does that show the amount of the indebtedness of the county on the 1st day of January, 1880?

A. Yes, sir.

Plaintiff objected for the same reason.

The Court: That is clearly proper as a preliminary question.

To which ruling of the court plaintiff by counsel then and there duly excepted.

Q. Does it give a statement of the condition of the county finances at that time?

A. Yes, sir; it should.

Plaintiff objected to said answer as a conclusion, and because immaterial and incompetent.

Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

Q. Has the county among its records a book which shows the semi-annual financial statement of the county, made twice a year?

A. Yes, sir.

Q. Now when does that book commence its record, a record of the semi-annual statements?

Plaintiff objected because the book will show for itself, whether it is a semi-annual statement book.

Mr. BRYANT: The object is to show that what is known as the record of semi-annual statement book never commenced until some years after this, and that this is the only book which the county kept at that time.

Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

Q. When did that book commence to keep that record of semi-annual statements?

Plaintiff objected because the book will show for itself when it commenced, and because it is immaterial and incompetent. Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

Q. When do the records shows that the county commenced to keep what is called the regular semi-annual statement book?

72 Plaintiff objected for the reasons last above given. Objection overruled; to which ruling of the court the plaintiff by counsel then and there duly excepted.

A. I have not examined these old books which were kept in the office; only glanced over them; and I do not know when that book was started.

Q. Is this the first book showing the financial condition of the county?

A. Yes, sir.

Q. This is the beginning?

A. Yes, sir.

Q. Now, how far does that run from the time it begins?

A. It commences in January, 1880, and ends December 31, 1889.

Q. Now is that the only book kept or that was kept by the county, which shows these facts?

A. Yes, sir.

Mr. BRYANT: Here is a transcript of it which we would like to introduce in evidence instead of the original book.

The COURT: Offer your book, and then you may leave the transcript on file.

Mr. BRYANT: We will offer the book, then, showing the condition of the county's finances.

Plaintiff objected for reasons last above given; objection overruled; to which ruling of the court the plaintiff by counsel then and there duly excepted.

Q. Now, Mr. Newell, will you indicate the pages which show the county's financial standing from the beginning of the book, until the 31st of December, 1880, I believe, when these bonds were dated?

Plaintiff objected for reasons last above given; objection overruled; to which ruling of the court plaintiff by counsel then and there duly excepted.

A. It is found on pages 1, 2 and 3.

Q. Pages 2 and 3 show the semi-annual statement to July 1, 1880; is that right?

A. Yes, sir.

Q. Page 1 shows the statement to January 1, 1880?

Plaintiff objected for reasons last above given; objection overruled; to which ruling of the court the plaintiff by counsel then and there duly excepted.

73 A. Yes, sir.

Q. Are these papers copies of this first and second pages, and certified to?

Plaintiff objected for the reasons last above given; objection overruled; to which ruling of the court the plaintiff by counsel then and there duly excepted.

A. Yes, sir.

Q. Now turn to pages 21 and 22. What does that show?

Plaintiff objected for reasons last above given; objection overruled; to which ruling of the court the plaintiff by counsel then and there duly excepted.

A. It shows the county indebtedness in 1879.

Q. It shows the county indebtedness at that time?

Mr. PARKS: I submit to the court that the questions are unfair and improper. He asks him straight out if they show the county indebtedness. That is a conclusion of law. In fact, the witness knows no more about what the book shows than if it had never existed. I object to the form of the question. It is impossible for him to know it unless he made it, unless he was the county officer who contracted the debt. It is leading, incompetent, and calls for conclusions of law and fact.

Objection overruled. To which ruling of the court plaintiff by counsel then and there duly excepted.

Q. Now turn to page 22, Mr. Newell, and tell us what (what) shows.

Plaintiff objected for reasons last above given; objection overruled; to which ruling of the court plaintiff by counsel then and there duly excepted.

A. The indebtedness of 1881 and 1882.

Q. What period does that end with?

A. It ends with December, 1882.

Q. Now can you give us from that book the amount of outstanding indebtedness of Lake county on January 1, 1880?

Plaintiff objected because immaterial and incompetent, and calling for conclusions of law and fact.

The COURT: Ask what that book shows.

Q. Does the book show the outstanding indebtedness of Lake county on the 1st of January, 1880?

74 Plaintiff objected for the same reasons last above given. Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

A. Yes, sir.

Q. Now then tell us the amount of the indebtedness, according to that book.

Plaintiff objected for the same reasons last above given. Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

A. It is \$84,296.28.

Q. Does that book show the amount of the outstanding indebtedness of Lake county on the 1st day of July, 1880?

Plaintiff objected for the same reasons last above given. Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

A. Yes, sir, it does.

Q. What was that amount?

Plaintiff objected for the reasons last above given. Objection overruled. To which ruling of the court plaintiff by counsel then and there duly excepted.

A. It is given here as \$198,394.57.

Mr. BRYANT: Now, if your honor please, I want also to show the amount on the 1st of January, 1881, because these bonds bear date after the semi-annual statement of July 1st, 1880. They are issued July 21st, 1880, but they were as a matter of fact issued some time prior to that, but that is the date of it and that is the date set up in the complaint. Of course a purchaser would be bound to ascertain the amount of this last semi-annual statement on the 1st of July. We also have the county bond register, which shows the amount of warrants from day to day, and which will show that up to the 21st of July when these bonds were issued, the indebtedness was continually increasing; and for the purpose of getting the record straight, and saving our exceptions, I would also like to show the amount of outstanding indebtedness on the 1st day of January, 1881, that being for the next period and the period within which these bonds were issued, and it seems to me that the period immediately preceding would cover it, but for the purpose of getting both in the record, I want to introduce them.

Plaintiff objected because immaterial and incompetent, and because it proves nothing, and is not within the issues. It calls for the conclusions of the witness and is not the best evidence.

75 The COURT: I think it may tend to show by these two statements that the county indebtedness was constantly increasing. I think that he may show that. I think they are bound by the statement of July 1st, but still I think he may offer it.

To which ruling of the court the plaintiff by counsel then and there duly excepted.

Q. Does that show the amount of outstanding indebtedness on the 1st of January, 1881?

A. Yes, sir.

Q. What is the amount?

A. It is \$293,053.20.

Q. Now, according to that book, is that outstanding indebtedness which you mentioned, evidenced? By warrants or bonds?

Plaintiff objected because immaterial and incompetent; not within the issues; not the best evidence; and calls for conclusions of law and fact. Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted.

A. It is evidenced by bonds.

Q. How long have you lived in Leadville, Mr. Newell?

A. About fourteen years and a half.

Q. Were you there in 1880?

A. No, I went there in 1881.

Q. Do you know the files of the Leadville Weekly Democrat?

A. No, sir, I don't. I know there were files, that is all; I have seen them in the office. I do not know anything about them.

Mr. BRYANT: Now, if your honor please, we have here copies of the warrant register of Lake county, showing the indebtedness of Lake county from day to day during all this period of time, and we would offer those in evidence.

Q. Did you bring the warrant register with you, Mr. Newell?

A. No, sir.

Q. What is that other book?

A. That is the commissioners' record, the other book.

#### Cross-examination.

By D. E. PARKS, Esq.:

Q. How long have you been county clerk of Lake county?

A. I went into office January 9, 1894.

76 Q. What do you know about the indebtedness of Lake county except during your term of office?

A. I do not know anything about it.

Q. Your testimony given here, of the face of that book, is only what you suppose the book states?

A. It is only what the book gives.

Q. It is your supposition that the book states the indebtedness, is it not?

A. Well, of course.

Q. You don't know whether that is the indebtedness?

A. No, sir.

Q. When did you first go to Leadville?

A. In 1881.

Q. Then you do not know anything about this transaction of your own personal knowledge?

A. I have no personal knowledge of it.

Q. The thing happened before you came there, didn't it?

A. It did. I did not go there until 1881.

Q. All you know of this transaction is from your two years' experience in the county clerk's office, and then only when your especial attention has been called to it?

A. Yes, sir.

Q. You know nothing yourself of this transaction, this indebtedness, except what you glean from the face of the books?

A. That is all I could know.

Q. Now, when you swore that the indebtedness of Lake county is a certain amount, you simply meant to be understood that those figures there show that?

A. Yes, sir.

The COURT: Be fair to the witness. He has testified that the books show that.

WITNESS: All in the world that I know is what the book shows.

Q. You assume that the book shows something. You do not know that it shows it?

A. It shows it there.

Q. It purports to show it, you mean. It purports to show certain figures on a certain subject, does it not? That is what you mean?

A. As I said, all that I know is what the book shows. I did not know anything about it at that time, except as it was filed in the office of the county clerk.

Q. You never had occasion to look into this indebtedness to see what it was?

A. No, sir, not in that old book.

77 Q. I mean that you have not gone back in this record and looked up this indebtedness and taken up these warrants which are in your office.

A. I had no occasion to do that.

Q. Do you know whether or not these warrants are in your office?

Defendant objects to the line of cross-examination. All that witness has testified to is in this book.

Mr. PARKS: You have got an expert witness; I want to see what he knows about this book.

Q. Do you know whether or not the warrants, or the indebtedness shown on the face of this record is an indebtedness or not, of your own knowledge?

Mr. BRYANT: I object. He cannot know it of his own knowledge.

The COURT: He may answer it if he knows.

A. Well——

Q. Yes or no.

The COURT: No, Mr. Parks; you will not take the double ground



of witness and counsel. You ask the questions and let him answer, without any suggestions.

WITNESS: As I said, the only thing I know is what these books show, and the only thing I know of the books is that they were in my office when I took charge of the office, and I know they are there today.

Q. You do not know whether the books are correct or not?

A. I do not know about that.

Q. You do not wish to be understood as testifying that the books are correct?

A. I do not testify to somebody else's work at all, and I did not mean to do that at the start.

Q. This is not the record of the semi-annual statements of the county, that is, the record required under the law? What is that book there, as you understand it?

A. That is the county clerk's account book, as he kept it at that time.

Q. Account book?

A. As I understand it. It does not give the semi-annual statements as we give them today.

Q. You are familiar with the statutes, are you not, about semi-annual statements?

The COURT: You need not ask a question of law.

To which ruling of the court the plaintiff by counsel then and there duly excepted.

78 Q. This book is kept by the clerk, and not signed by the board of county commissioners, or the chairman of the board?

A. I never examined the books, Mr. Parks, to know whether the county commissioners ever signed it. I cannot swear as to whether they have signed some of the work there in that book or not.

Q. Well, there is another book in which you record semi-annual statements, is there not?

A. Yes, sir.

Q. This is not that book?

A. This is not such book.

Redirect examination.

By W. H. BRYANT, Esq.:

Q. This is the semi-annual statement as kept at that time?

A. Yes, sir.

Q. Do the ones that you keep now—do you require the county commissioners to sign them?

A. I have never required the county commissioners to sign them.

Q. Not required by law?

A. No, sir.

## Recross-examination.

By D. E. PARKS, Esq. :

Q. What do you mean by semi-annual statements, when you say this book shows the semi-annual statements?

A. I say, as I understand it, at that time.

Q. Show me where that book contains a semi-annual statement?

A. I do not know anything about that, their method of keeping them, except as the figures show.

Q. Then you cannot say that it contains a semi-annual statement?

A. Not as they (make) it out then; not as they made it out then.

Mr. BRYANT: We offer the original book, and substitute this copy.

Mr. JOHNSON: We object to the introduction of this record of the outstanding indebtedness; it is not a semi-annual statement signed by the board of county commissioners, and recorded in a book kept for that purpose, within the intent, purpose and meaning of the statute requiring such a record to be kept. There is no evidence of its record as such.

Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

79 Said exhibit was then introduced in evidence and was marked Exhibit 9 and was in words and figures as follows:

## EXHIBIT 9.

*Lake County in Account with County Treasurer.*

Expenditure (-count) to January 1st, A. D. 1880, county fund.

1880.		1880.	
Jan. 1.	County clerk's fees.....	1,150.00	Jan. 1. By amount of warrants can..... 11,777.96
	County assessor's fees.....	2,467.93	" " By outstanding indebtedness of
	County attorney's fees.....	1,300.28	Lake county in county war-
	Sheriff's fees.....	9,906.77	rants, January 1, A. D. 1880,
	County physician's fees.....	729.67	to balance .....
	County school supt's fees.....	75.00	84,296.28
	County comm. fees.....	2,574.77	
	County surveyor's fees.....	347.00	
	County cor. and com. fees.....	1,322.75	
	Justice fees.....	3,378.75	
	Constable fees.....	1,171.35	
	Justice court fees.....	1,092.85	
	District court fees.....	8,686.30	
	County court fees.....	503.44	
	County jail expenses.....	15,913.91	
	Expense of Co. prisoners.....	1,768.70	
	County poor expenses.....	11,709.17	
	Purchase of court-house.....	10,552.00	
	Books and stationery for Co.		
	offices.....	5,811.86	
	County printing.....	863.73	
	Furniture and repair Co.		
	officers.....	5,697.16	
	Transcript of record.....	6,349.05	
	County gauger's expenses.....	379.32	
	Auditing accounts between		
	Lake and Chaffee counties....	975.00	
	Election expenses.....	1,036.80	
	Commissioners' expenses.....	50.00	
	Interests paid on warrants.....	182.61	
		96,074.24	96,074.24

## LAKE, STATE OF COLORADO, VS. HARRY H. DUDLEY.

71

*Expenditure Account, Road Fund.*

1880.	1880.
Jan. 1. Total expenditure on county roads in repairing, making and bridging.....	Jan. 1. By (and) of road warrants can. 2,320.
Interest paid on warrants.....	By outstanding indebtedness of Lake county, in road warrants, January 1, A. D. 1880, to balance.....
4,161.84	1,850.53
69.28	
4,171.12	4,171.12

80

*Expenditure Account to July 1st, A. D. 1880, County Fund.*

1880.	1880.
July 1. Warrants outstanding.....	Feb. 4. Warrant No. 1618 can.....
Jan. 1. County clerk's fees.....	" " Warrant No. 1725 can.....
" judge's ".....	" 19. Warrant No. 1886 can.....
" sheriff's ".....	May 3. Warrant No. 2654 can.....
" commissioners' fees.....	Amount of warrants paid in for taxes and cancelled.....
County commissioners' expenses.....	Amount of warrants paid in for licenses and cancelled.....
County attorney's fees.....	Outstanding indebtedness of Lake county in county warrants July 1st, A. D. 1880.....
County treasurer's fees.....	
County assessor's fees.....	
County physician's fees.....	
County coroner fees.....	
County coroner court fees.....	
County school sup't fees.....	
County surveyor fees.....	
County pauper expenses.....	
County justice fees.....	
County justice court expenses.....	
County printing.....	
County books and stationery.....	
County jail expenses.....	
" wood.....	
" offices ".....	
Building purchase.....	
County clerk district court.....	
County district court expenses.....	
County prosecuting attorney.....	
County election expenses.....	
County supplies.....	
" rent of offices.....	
Lost warrants.....	
Constables' fees.....	
Transcript county records.....	
Public buildings.....	
Militia expense.....	
County water.....	
Purchase of lots.....	
Tax refunded.....	
County court expenses.....	
Rewriting plats.....	
County gas.....	
" road expenses.....	
Forward.....	Forward.....
\$203,069.62	\$217,057.75
81 To forward.....	By forward.....
" prosecuting witness.....	\$217,057.75
To poor-house expenses.....	
To sheriff's posse.....	
" special attorney.....	
To court-house expenses.....	
To burning dead horses.....	
To interest paid on county warrants.....	
588.78	
\$217,057.75	To page 4.....
	\$217,057.75

*Expenditure Account, Road Fund.*

To warrants outstanding January 1, 1880.....	By amount of road warrants cancelled..
To expenditures on county roads in repairing, making, bridging, &c.....	Outstanding indebtedness of Lake county in road warrants July 1st, A. D. 1880.....
To interest paid on warrants.....	
410.45	752.98
9,047.17	
\$10,918.15	To page 5.....
	\$10,918.15

*Expenditure Account, County Building Fund.*

To warrants issued for purchase of block No. 21.....	9,600.00	By warrants cancelled.....	9,600.00
	<u>\$9,600.00</u>		<u>\$9,600.00</u>

*Expenditure Account, Contingent Fund.*

To expense of prisoners.....	\$325.25	By warrants cancelled and paid in.....	1,490.88
paupers.....	701.28		
county officers.....	320.35		
special dep. assessor.....	144.00		
	<u>\$1,490.88</u>		<u>\$1,490.88</u>

*Expenditure Account, County Bond Fund.*

To bonds issued.....	10,750.00	By outstanding bonds July 1, 1880.....	10,750.00
	<u>\$10,750.00</u>	To page 5.....	<u>\$10,750.00</u>

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*Lake County in Account with County Treasurer.*

Expenditure account to January 1st, A. D. 1881, county fund.  
1880.

County clerk's fees and expenses.....	2,371.49	By order of board:	
Assessor's fees.....	3,433.40	July 12. War. No. 280 can.....	322.00
Sheriff fees.....	5,161.88	" " " " 3781 ".....	76.20
Coroner's fees.....	1,604.10	Aug. 14. " " 4080 ".....	168.58
Coroner's court fees.....	1,538.86	Sept. 9. " " 4467 ".....	90.90
County commissioners' fees.....	1,675.25	" " " " 4482 ".....	500.00
Constable fees.....	6,393.55	Nov. 18. " " 4977 ".....	807.70
Justice fees.....	6,291.10	" 19. " " 4078 ".....	360.60
Justice court fees.....	1,565.06	Amount of warrants paid in for taxes and cancelled.....	14,084.58
County physician.....	2,349.55	Warrants paid in cash and cancelled.....	2,838.19
Expense for paupers.....	16,195.60	Warrants paid in for rent and cancelled.....	110.48
Court-house expenses.....	3,492.64	Amount of warrants paid in for license and cancelled....	2,326.00
Special sheriff fees.....	1,569.40	Outstanding indebtedness of Lake county in county war- rants Jan'y 1, A. D. 1881, without accrued interest....	293,061.20
County attorney fees.....	4,791.82		
Special attorney ".....	1,471.95		
District clerk fees.....	2,923.70		
" court expenses.....	4,808.40		
Duplicate warrants.....	84.00		
County officers' expenses.....	18,135.23		
County jail.....	4,806.01		
Stationery Co. officers.....	4,743.46		
Miscellaneous acct's.....	2,240.84		
County school -sup't.....	1,009.50		
County treas. fees.....	6,376.74		
County court expenses.....	158.90		
County judge fees.....	93.15		
Boarding prisoners.....	4,303.60		
Stenographer.....	160.00		
Board for guard.....	395.45		
Prisoners to Canon.....	1,511.10		
Election expense.....	4,183.60		
Interest paid on county warrants.....	1,217.53		
Warrants outstanding July 1, 1880.....	198,394.57		
	<u>314,456.73</u>	To page 6.....	<u>314,456.73</u>

*Lake County in Account with County Treasurer.**Expenditure account, road fund.*

To amount warrants outstanding July 1st, 1880.....	752.98	By amount of road } paid in..... } Cash warrants.. {	1,946.75
Expenditure on county roads, repair- ing bridging, &c.....	20,212.39	Warrants cancelled.....	450.90
Interest paid on warrants.....	31.66	Outstanding indebtedness of Lake county in road warrants January 1, 1881.....	19,499.38
	<u>20,997.03</u>	To page 7.....	<u>20,997.03</u>

*Expenditure Account, County Building Fund.*

To warrants issued from July 1, 1880, to Jan'y 1, 1881.....	37,147.01	By warrants paid in cash and can- celled.....	37,251.99
Interest p'd on warrants.....	225.63	Warrants out-standing January 1, 1881..	120.65
		To page 7.	

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*Expenditure Account, County Bond Fund.*

To bonds outstanding July 1st, 1880...	10,756.00	By bonds outstanding Jan'y 1st, 1881..	50,000.00
Bonds issued to Jan'y 1, 1881.....	39,250.00		
1881.	50,000.00		50,000.00
Jan'y 1. To bonds outstanding.....	50,000.00		

STATE OF COLORADO, }  
County of Lake, } ss :

I, J. W. Newell, clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of the expenditure, accounts and indebtedness of the county of Lake from Jan'y 1, 1880, to Jan'y 1, 1881, as it appears of record in my office in county clerk's account book, page 1 to 5 (inc.).

Witness my hand and official seal this twelfth day of January, 1894.

[Seal of Lake County, State of Colorado.]

J. W. NEWELL,  
Clerk and Recorder,  
By R. O. NORTH, Deputy.

Indorsed: 2758. U. S. circuit court. H. H. Dudley vs. Lake County. Expenditure indebtedness acc't of Lake Co. for 1880. Filed Jan. 24, 1894. Robert Bailey, clerk U. S. circuit court. Thomas, Bryant & Lee, def't's att'ys.

Mr. BRYANT: We offer in evidence a transcript from the records of Lake county, showing the issuance of county warrants of the county, the amount of them from day to day, the numbers of them, &c., certified to by the county clerk and recorder, beginning on the 7th day of October, 1879, and ending with the 31st day of December, 1879. They have various other certificates here, of other dates; here is one on the 30th day of January, 1880, and I think it runs up to and includes the 1st day of—at any rate, it goes up to the date of the issuance of these bonds.

The COURT: It shows what amount?

Mr. BRYANT: Well, it varies—I have got a summary of it here, showing the total indebtedness from October 7, 1879, to December 31, 1879, and from June 30, 1880, to December 31, 1880; and this is certified to by the county clerk as being a summary of the warrants themselves, taken from the warrant register.

84 Plaintiff objected because incompetent and immaterial; not the best and proper evidence.

Objection overruled. To which ruling of the court the plaintiff

by counsel then and there duly excepted and exceptions were allowed by the court.

Said exhibits offered in evidence are in words and figures as follows, to wit:

(EXHIBIT 10.)

In the Circuit Court of Appeals within and for the Eighth Judicial Circuit.

HARRY H. DUDLEY, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE,  
Colorado, Defendant in Error. }

It is hereby stipulated and agreed by and between the plaintiff in error and the defendant in error in the above-entitled cause, that Exhibit No. 10 which was introduced in evidence in the trial of said cause by the defendant in error, consists of a certified copy of the warrant register of Lake county, Colorado, for the period beginning June 30th, 1879, and ending December 31st, 1880, and in substance shows the following facts: That the total outstanding warrants issued by Lake county, consisting of promises to pay that amount of money, and purporting to represent the indebtedness of Lake county, consisted of the following sums upon the following dates: June 30, 1879, \$33,432.98; October 7th, 1879, \$58,382.46; December 31st, 1879, \$86,146.81; June 30th, 1880, \$209,897.55; December 31st, 1880, \$362,683.23.

And it is further stipulated and agreed that said exhibit shows that the indebtedness between each of the dates above mentioned continually increased until it reached the amount named at the next period of indebtedness; that is to say, the total indebtedness each and every day increased from the sum of \$33,432.98 upon the 30th day of June, 1879, until it reached the sum of \$362,683.22 on the 31st day of December, 1880, and the above sums mentioned on the particular dates simply show the amount of outstanding warrants existing at that particular time.

It is further stipulated and agreed that this summary of Exhibit No. 10 may be printed in the printed transcript of the record in the above-entitled cause and used upon the hearing in lieu of printing said Exhibit Number Ten at length.

DAN'L E. PARKS,

H. B. JOHNSON,

*Attorneys for Plaintiff in Error.*

GEORGE R. ELDER,

THOMAS, BRYANT & LEE,

*Attorneys for Defendant in Error.*

No. 821. In the circuit court of appeals, in the eighth judicial circuit. Harry H. Dudley vs. The Board of County Commissioners of the County of Lake, Colorado. Stipulation as to printing. Filed Jul- 23, 1896. John D. Jordan, clerk.

Mr. BRYANT: Now here is a summary of the different accounts which appear in the former offer.

Plaintiff objected because immaterial and incompetent.

Objection sustained. To which ruling of the court the defendant by counsel duly excepted. And said exhibits so excluded are as follows:

\* \* \* \* \*

Mr. BRYANT: Now I want to offer a certified copy of the various orders made by the county commissioners, and they are numbered from 1 to 13, with the exception of No. 4, which I find relates to another matter—showing the action of the county commissioners in authorizing this bond issue. I introduce them for the purpose of showing that that was a debt created by loan. The first would perhaps cover the whole matter if it is admitted that these bonds were issued in pursuance of them and I do not think there is any question about that. After reciting the preamble, the board resolves, "Whereas, the necessities of Lake county require," &c. Now the records go on and show that an election was had, and the vote of the people was in favor of issuing the bonds and that the bonds were sold, so that it shows altogether that this was the creation of a debt by loan; and we contend that under the first provision of the constitution of the State, that the creation of a loan in any one year, could not exceed \$1.50 per thousand, which would be about \$16,000 for this county; and it brings it within the rule laid down by the Supreme Court, that where it appears on the face of the bond itself that it is beyond that amount, they are void; so that I offer these simply for the purpose of proving that this was the creation of a debt by loan. Said papers so introduced in evidence are in words and figures as follows:

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## EXHIBIT 16.

STATE OF COLORADO, }  
County of Lake, } ss:

At a special meeting of the Board of County Commissioners for Lake County, Colorado, held at the court-house, in the city of Leadville, on the fourth day of September, A. D. 1879, there were present:

Jos. H. Pearce, chairman;

Benj. Barnard, commissioner;

— — —, county attorney;

Jos. H. Wells, clerk;

when the following proceedings, among others, were had and done, to wit:

On motion it is ordered by the board that whereas, the necessities of Lake county require the erection of public buildings and the building and construction of public roads and bridges, and there are no moneys in the treasury of said county to meet the necessary outlay required for said purposes and a loan of a sufficient sum is required to meet such expenditures, and whereas, the creation of



such an indebtedness for those purposes is deemed necessary by this board and expedient at this time to appreciate the value of the obligations of said county:

It is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars (\$50,000) and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000.00) and it is further ordered that the question of making such loan on the account of the county be and the same is hereby submitted to a vote of the electors of said county qualified to vote on said question at the next general election to be held in said county on the 7th day of October next in accordance with the general laws of Colorado in such case made and provided. It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of this submission to the electors of said county as the law requires.

JOS. PEARCE, *Chm.*

Attest: JOS. H. WELLS, *Clerk.*

STATE OF COLORADO, }  
County of Lake, } ss:

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing order is  
87 truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Leadville, this fourteenth day of November, A. D. 1893.

C. H. S. WHIPPLE,  
*County Clerk,*

Per JNO. T. JOYCE, *Deputy.*

[Seal of Lake County, State of Colorado.]

Indorsed: Certified copy of order—Book 2, page 65—made by the Board of County Commissioners of Lake County, Colorado, Sept. 4, 1879. Ordered that \$55,000 be submitted to vote of the people. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court.

#### EXHIBIT 17.

Commissioners' record.

Book No. 2, page No. 94. Copy.

LEADVILLE, October 27, A. D. 1879.

The board met pursuant to adjournment.

Present: Same officers as on previous session. (Record shows that members present at said previous meeting were Jos. Pierce, chairman, Geo. M. Gerrish, member; R. T. Taylor, member; Jos. H. Wells, clerk; E. T. Wolverton, deputy.)

Whereas an order was made by and entered of record in the proceedings of this board on the 4th day of September, A. D. 1879, of which the following is a copy :

Whereas, the necessities of Lake county require the erection of public buildings, and the buildings and construction of public roads and bridges, and there are no moneys in the treasury of said county to meet the necessary outlay required for such purposes, and a loan of a sufficient sum is required to meet such expenditures ; and

Whereas, the creation of such an indebtedness for those purposes is deemed necessary by this board and expedient at this time to appreciate the value of the obligations of said county.

It is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars (\$50,000.00) and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000).

And it is further ordered that the question of making such loan on account of the county be and the same is hereby submitted to a vote of the electors of said county qualified to vote on said question at the next general election to be held in said county on

88 the seventh day of October next in accordance with the general laws of Colorado in such case made and provided.

It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of submission to the electors of said county as the law requires.

And whereas, satisfactory evidence is adduced before this board of a full compliance with said order in relation to the submission of the question of making said loan to a vote of the electors of the county qualified to vote on the question at the general election held in said county on October 7th, A. D. 1879, and with the laws of Colorado in such case made and provided.

And whereas, it appears that in pursuance of the said order the clerk of said county caused a notice of such order of which the following is a copy, to wit :

*Notice.*

To qualified electors :

Notice is hereby given to the electors of Lake county qualified to vote on the question that at a meeting of the Board of County Commissioners of said County of Lake held at Leadville in said county on the 4th day of September, A. D. 1879, an order was made by said board and entered of record in the proceedings of said board of which the following is a copy :

Whereas, the necessities of Lake county require the erection of public buildings and the building and construction of public roads and bridges, and there are no moneys in the treasury of said county to meet the necessary outlay required for said purposes and a (lone) of a sufficient sum is required to meet (sich) expenditures ; and

Whereas, the creation of such an indebtedness for those purposes is deemed necessary by this board, and expedient at this time to appreciate the value of the obligations of said county ; it is therefore ordered by this board that the amount of money required for

the erection of public buildings is the sum of fifty thousand dollars (\$50,000.00) and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000);

And it is further ordered that the question of making such loan on the account of the county, be and the same is hereby submitted to a vote of the electors of said county, qualified to vote on said question at the next general election, to be held in said  
89 county on the seventh day of October next, in accordance with the general laws of Colorado, in such case made and provided.

It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of submission to the electors of said county, as the law requires, and that in pursuance of said order, a vote of said electors will be taken by the judges of election, at the respective polling places in the several election precincts of said county, at the general election to be held on Tuesday, October 7, A. D. 1879.

All persons voting on the question shall vote by separate ballot, whereon is placed the words "For county indebtedness" or "Against county indebtedness." And no person shall vote on the question unless he have the necessary qualification of an elector as provided by law, and shall have paid a tax upon property assessed to him in the county for the year immediately preceding said election. By order of the Board of County Commissioners of Lake County.

JOSEPH H. WELLS,

*County Clerk and ex Officio Clerk of said Board.*

To be posted in a conspicuous place in each voting precinct in this county for at least thirty days preceding said election. And whereas it also appears to this board by the canvass of the votes cast in said county, on said general election day, upon the question of making such loan, that a majority of all the votes cast are for county indebtedness and that thereby, under the constitution and laws of Colorado, this board is authorized to contract said debt in the name of the county for said specified purposes. It is therefore ordered by this board as follows, to wit:

First. That the bonds of Lake county to the amount of ten thousand seven hundred and fifty dollars (\$10,750.00) be made and issued, and a loan of money effected thereon, to be used for the purpose of erecting necessary public buildings.

Second. That said bonds, so to be issued, shall be in form and in the words and figures, as follows:

No. —.

\$—.

*Lake County Bond.*

The County of Lake, Colorado,

Is hereby bound, and promises to pay to — or bearer the sum of — dollars at its pleasure, ten years after date, but  
90 absolutely twenty years after date with interest thereon annually, on the first day of April in each year at the rate of

ten per cent. per annum from date until paid. Said principal is payable on presentation of this bond, when due, or when called in by the county for redemption after ten years; and said interest is payable as it falls due, on presentation of the coupons hereto attached, at the office of the county treasurer of said county. Issued by order of the Board of County Commissioners of Lake County at Leadville in said county this — day of —, A. D. 18—.

Attested and sealed by—

\_\_\_\_\_,  
*County Clerk.*

\_\_\_\_\_,  
*Chairman of the Board.*

Third. That said bonds shall be coupon bonds, payable at the pleasure of the county ten years after the date of their issuance, but absolutely due and payable twenty years after such date.

Fourth. That there shall be annexed to each bond so issued twenty coupons upon which the annual interest as it falls due on said bonds, shall be payable on presentation thereof to the treasurer of Lake county, on the first day of April in each and every year, said coupons shall be numbered from one to twenty in the order in which they become due and be in form and in words and figures, as follows:

*Coupon No. — to Lake County Bond No. —.*

§—.

To the treasurer of Lake county, Colorado:

On or after April 1, pay to — or bearer, the sum of — dollars — for annual interest due on Lake county bond No. — issued —, A. D. 18— and charge same to account of public building fund. Issued — by order of the Board of Commissioners of Lake County, at Leadville, Colo., —, A. D. 18—.

\_\_\_\_\_,  
*Chairman of Board.*

Attest: \_\_\_\_\_,  
*County Clerk.*

Fifth. The annual interest on said bond is fixed and allowed at the rate of ten per cent. (10 %) per annum from their date until paid.

Sixth. That the interest on said bonds shall be payable annually, on the first day of April of each year, and the principal sum due or called in for redemption at the office of the county treasurer of said county of Lake.

Seventh. Said bonds shall each be signed by the chairman of this board, attested by the clerk of the county of Lake, bear the seal of said county countersigned, numbered and registered by the county treasurer and numbered and registered by the county clerk in a book to be kept for that purpose by each of said officers, in the order in which they are issued. Each bond shall state upon its face the amount for which the same is issued, to whom

issued and the date of its issuance, but no bond shall be of less denomination than fifty dollars (\$50.00) said bonds so to be issued shall be for the following denominations, viz., seventeen bonds for one hundred dollars (\$100.00) one bond for fifty dollars (\$50.00), twelve bonds for five hundred dollars (\$500) each and twelve bonds for the sum of two hundred and fifty (\$250.00) each.

STATE OF COLORADO, }  
County of Lake, } ss :

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county,  
Seal of Lake County, State of Colorado, at Leadville, this 15th day of November, A. D. 1893.

C. H. S. WHIPPLE,  
County Clerk,  
Per JNO. T. JOYCE, Deputy.

Indorsed : No. 2. Commissioners' Record, Book No. 2, page No. 94. Copy. Oct. 27, 1879. Vote counted; bonds ordered issued. 2758. Dudley vs. Lake Co. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court.

#### EXHIBIT 18.

STATE OF COLORADO, }  
County of Lake, } ss :

At a special meeting of the Board of County Commissioners of Lake County, Colorado, held at the court-house, in the city of Leadville, on the seventeenth day of March, A. D. 1880, there were present :

Jos. Pearce, chairman,  
J. H. Willard, commissioner,  
G. M. Gerrish, "  
— — —, county attorney,  
Joseph H. Wells, clerk,  
E. T. Wolverton, deputy,

when the following proceedings, among others, were had and done, to wit :

On motion, it is ordered that the bid of Walter H. Jones of 95c. on the dollar for the bonds heretofore issued by the county  
92 for the sum of \$10,750, be and is hereby accepted and that the said bonds be delivered to him on his paying into the county (treasurer) the sum of \$10,212.50 in cash to credit of the public building fund.

STATE OF COLORADO, }  
 County of Lake, } ss:

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the county and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof I have hereunto set  
 Seal of Lake County, my hand and affixed the seal of said county,  
 State of Colorado. at Leadville, this 15th day of November,  
 A. D. 1893.

C. H. S. WHIPPLE,  
*County Clerk,*

Per JNO. T. JOYCE, *Deputy.*

Indorsed: No. 3. Certified copy of order—Book 2, page 181—made by the Board of County Commissioners of Lake County, Colorado, March 17, 1880. Bid of Walter H. Jones for \$10,750 at 95c. accepted. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court.

#### EXHIBIT 19.

Commissioners' Record.

Book No. 2, page No. 208.

Copy.

At a meeting of the Board of County Commissioners of Lake County, held in the office of said board at Leadville, Lake County, April 27th, A. D. 1880.

Present: G. M. Gerrish, chairman *pro tem.*

J. H. Willard, member,

O. M. Dearborn, "

Frank T. Caley, "

Jos. H. Wells, clerk,

E. T. Wolverton, deputy.

On motion it is ordered by this board that the order heretofore made by this board dated October 27th, A. D. 1879, and entered of record in the proceedings of this board at pages 94, 95, 96, and 97 of said proceedings in the words and figures following:

93 Whereas an order was made by and entered of record in the proceedings of this court on the 4th day of September, A. D. 1879, of which the following is a copy:

Whereas, the necessities of Lake county require the erection of public buildings, and the building and construction of public roads and bridges and there are no moneys in the treasury of said county to meet the necessary outlay required for such purposes and a loan of a sufficient sum is required to meet such expenditure, and

Whereas, the creation of such an indebtedness for those purposes is deemed necessary by this board and expedient at this time to appreciate the value of the obligations of said county.

It is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars (\$50,000.00) and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000.00).

And it is further ordered that the question of making such loan on account of the county be, and the same is hereby, submitted to a vote of the electors of said county, qualified to vote on said question at the next general election to be held in said county on the seventh day of October next in accordance with the general laws of Colorado, in such case made and provided.

It is further ordered that the clerk of said county be, and he is hereby, authorized and directed to give and publish the notice of submission to the electors of said county as the law requires.

And whereas satisfactory evidence is adduced before this board of a full compliance with said order in relation to the submission of the question of making said loan to a vote of the electors of this county qualified to vote on the question at the general election held in said county on October 7th, A. D. 1879, and with the laws of Colorado in such case made and provided.

And whereas, it appears that in pursuance of the said order the clerk of said county caused a notice of such order of which the following is a copy, to wit :

*Notice.*

To qualified electors :

Notice is hereby given to the electors of Lake county qualified to vote on the question that at a meeting of the Board of County Commissioners of said County of Lake, held at Leadville in said county on the 4th day of September, A. D. 1879, an order was made by said board and entered of record in the proceedings of said board of which the following is a copy :

Whereas the necessities of Lake county require the erection of public buildings, and the building and construction of public roads and bridges, and there are no moneys in the treasury of said county to meet the necessary outlay required for said purposes and a loan of a sufficient sum is required to meet such expenditures, and

Whereas, the creation of such an indebtedness for these purposes is deemed necessary by this board and expedient at this time to appreciate the value of the obligations of said county ; it is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars (\$50,000.00) and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000.00).

And it is further ordered that the question of making such loan on the account of the county be, and the same is hereby, submitted to a vote of the electors of said county, qualified to vote on said question at the next general election to be held in said county on the seventh day of October next, in accordance with the general laws of Colorado, in such case made and provided.

It is further ordered that the clerk of said county be, and he is



hereby, authorized and directed to give and publish the notice of submission to the electors of said county as the law requires.

And that in pursuance of said order a vote of said electors will be taken by the judges of election at the respective polling places in the several election precincts of said county at the general election to be held on Tuesday, October 7, A. D. 1879. All persons voting on that question shall vote by separate ballot, whereon is placed the words "For county indebtedness" or "Against county indebtedness." And no person shall vote on the question unless he have the necessary qualification of an elector as provided by law, and shall have paid a tax upon property assessed to him in the county for the year immediately preceding said election.

By order of the Board of County Commissioners of Lake County.

JOSEPH H. WELLS,

*County Clerk and ex Officio Clerk of said Board.*

95 To be posted in a conspicuous place in each voting precinct in this county, for at least thirty days preceding said election.

And whereas it also appears to this board by the canvass of the votes cast in said county on said general election day upon the question of making such loan that a majority of all the votes cast are for county indebtedness and that thereby under the constitution and laws of Colorado, this board is authorized to contract said debt in the name of the county for said specified purposes.

It is therefore ordered by this board as follows, to wit:

First. That the bonds of Lake county to the amount of ten thousand seven hundred and fifty dollars (\$10,750.00) be made and issued and a loan of money effected thereon to be used for the purpose of erecting necessary public buildings.

Second. That said bonds so to be issued shall be in form and in the words and figures as follows:

No. —.

\$—.

*Lake County Bond.*

The County of Lake, Colorado,

Ishereby bound and promises to pay to ——— or bearer the sum of — dollars at its pleasure ten years after date, but absolutely twenty years after date, with interest thereon annually on the first day of April in each year at the rate of ten per cent. per annum from date until paid. Said principal is payable on presentation of this bond when due, or when called in by the county for redemption after ten years; and said interest is payable as it falls due on presentation of the coupons hereto attached, at the office of the county treasurer of said county. Issued by order of the Board of County Commissioners of Lake County at Leadville in said county this — day of —, A. D. 18—.

Attested and sealed by—

\_\_\_\_\_,  
*County Clerk.*

\_\_\_\_\_,  
*Chairman of the Board.*

Third. That said bonds shall be coupon bonds, payable at the pleasure of the county ten years after the date of their issuance, but absolutely due and payable twenty years after such date.

Fourth. That there shall be annexed to each bond so issued twenty coupons upon which the annual interest as it falls due on said bonds shall be payable on presentation thereof to the treasurer of Lake county on the first day of April in each and every year; said  
96 coupons shall be numbered from one to twenty in the order in which they become due and be in form and in words and figures as follows:

*Coupon No. — to Lake County Bond No. —.*

§—.

To the treasurer of Lake county, Colorado:

On or after April 1, —, pay to — — or bearer, the sum of — dollars — for annual interest due on Lake county bond No. — issued —, A. D. 18—, and charge same to account of public building fund. Issued — by order of the Board of Commissioners of Lake County at — Leadville, Col., —, A. D. 18—.

—;  
*Chairman of Board.*

Attest:

—;  
*County Clerk.*

Fifth. The annual interest on said bonds is fixed and allowed at the rate of ten per cent. (10%) per annum from their date until paid.

Sixth. That the interest on said bonds shall be payable annually on the first day of April of each year, and the principal sum due or called in for redemption at the office of the county treasurer of said county of Lake.

Seventh. Said bonds shall each be signed by the chairman of this board attested by the clerk of the county of Lake bear the seal of said county, countersigned, numbered and registered by the county treasurer and numbered and registered by the county clerk in a book to be kept for that purpose by each of said officers, in the order in which they are issued. Each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance, but no bond shall be of less denomination than fifty dollars (\$50.00) said bonds so to be issued shall be for the following denominations, viz: seventeen bonds for one hundred dollars (\$100.00) one bond for fifty dollars (\$50.00) twelve bonds for five hundred dollars (\$500) each and twelve bonds for the sum of two hundred and fifty — (\$250.00) each. Be and the same is hereby re-enacted and adopted to issue the additional bonds of this county for the additional sum of ten thousand seven hundred and fifty dollars (\$10,750) and that the committee of ways and means of this board be and they are hereby authorized and directed to take charge of the issue of said bonds receive the same and negotiate a sale of them for the highest and best price that can be obtained for the

same, and deposit the proceeds of the sale in the treasury to the credit of the public building fund to the use of the county.

STATE OF COLORADO, }  
County of Lake, } ss :

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the County and State  
97 aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Leadville, this seventeenth day of November, A. D. 1893.

[Seal of Lake County, State of Colorado.]

C. H. S. WHIPPLE,

*County Clerk,*

By MARK E. CARR, *Deputy.*

Indorsed: No. 5. Commissioners' Record, Book No. 2, page No. 208. Copy. Dated Apr. 27, 1880. Order of Oct. 27, '79. Re-enacted to apply to additional sum of \$10,750. 2758. Dudley vs. Lake Co. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court.

#### EXHIBIT 20.

Commissioners' Record.

Book No. 2, page No. 289.

Copy.

LEADVILLE, *July 14th, A. D. 1880.*

Board met pursuant to adjournment.

Jos. Pearce, chairman,

O. M. Dearborn, member,

J. H. Willard, member,

Jos. H. Wells, clerk.

E. T. Wolverton, deputy.

On motion the order heretofore made by this board in regard to the issuance of bonds, at their meeting held April 27th, A. D. 1880, and entered of record in Book 2 at page 209 of Lake county records is hereby ordered rescinded.

On motion it is ordered by this board that the order heretofore made by this board, dated October 29th, 1879, and entered of record in the proceedings of this board at pages 94, 95, 96 and 97 of said proceedings in the words and figures following:

Whereas an order was made by and entered of record in the proceedings of this board, on the 4th day of September A. D. 1879 of which the following is a copy:

Whereas the necessities of Lake county require the erection of

98 public buildings and the building and construction of public roads and bridges, and there are no moneys in the treasury of said county to meet the necessary outlay required for such purposes, and a loan of a sufficient sum is required to meet such expenditures, and

Whereas the creation of such an indebtedness for those purposes is deemed necessary by this board, and expedient at this time to appreciate the value of the obligations of said county.

It is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars (\$50,000.00) and for the building and construction of roads and bridges, is the sum of five thousand dollars (\$5,000.00).

And it is further ordered that the question of making such loan on the account of the county, be and the same is hereby submitted to a vote of the electors of said county qualified to vote on said question at the next general election to be held in said county on the seventh day of October next in accordance with the general laws of Colorado, in such case made and provided. It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of submission to the electors of said county as the law required.

And whereas satisfactory evidence is adduced before this board of a full compliance with said order in relation to the submission of the question of making said loan to a vote of the electors of this county qualified to vote on the question at the general election held in said county on October 7th A. D. 1879 and with the laws of Colorado in such case made and provided, and whereas it appears that in pursuance of the said order the clerk of said county caused a notice of such order of which the following is a copy to wit:

*Notice.*

To qualified electors:

Notice is hereby given to the electors of Lake county qualified to vote on the question that at a meeting of the Board of County Commissioners of said County of Lake, held in Leadville in said county on the 4th day of September A. D. 1879 an order was made by said board, and entered of record in the proceedings of said board of which the following is a copy:

99 Whereas the necessities of Lake county require the erection of public buildings and the building and construction of public roads and bridges and there are no moneys in the treasury of said county to meet the necessary outlay required for said purposes, and a loan of a sufficient sum is required to meet such expenditures, and whereas the creation of such indebtedness for those purposes is deemed necessary by this board, and expedient at this time, to appreciate the value of the obligations of this county; it is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand (\$50,000.00) dollars and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000.00).

And it is further ordered that the question of making such loan on the account of the county be and the same is hereby submitted to a vote of the electors of said county, qualified to vote on said question at the next general election to be held in said county on the seventh day of October next in accordance with the general laws of Colorado, in such case made and provided.

It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of submission to the electors of said county as the law requires.

And that in pursuance of said order a vote of said electors will be taken by the judges of election at the respective polling places in the several election precincts of said county, at the general election to be held on Tuesday, October 7th, A. D. 1879.

All persons voting on that question shall vote by separate ballot, whereon is placed the words "For county indebtedness" or "Against county indebtedness," and no person shall vote on the question unless he have the necessary qualifications of an elector as provided by law and shall have paid a tax upon property assessed to him in the county for the year immediately preceding said election.

By order of the Board of County Commissioners of Lake county.

JOS. H. WELLS,

*County Clerk and ex Officio Clerk of said Board.*

To be posted in a conspicuous place in each voting precinct in this county, for at least thirty days preceding said election.

And whereas it also appears to this board by the canvass of the votes cast in said county on said general election day upon the question of making such loan that a majority of all the votes cast are for county indebtedness, and that thereby under the constitution and laws of Colorado, this board is authorized to contract said debt in the name of the county for said specified purposes.

100 It is therefore ordered by this board as follows, to wit:

First. That the bonds of Lake county to the amount of thirty-nine thousand two hundred and fifty dollars (\$39,250.00) be made and issued and a loan of money effected thereon to be used for the purpose of erecting necessary public buildings.

Second. That said bonds so to be issued shall be in form and in the words and figures as follows:

\$1,000.00.	UNITED STATES OF AMERICA.	\$1,000.00.
-------------	---------------------------	-------------

No. —.	<i>Bonds of Public Buildings.</i>
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UNITED STATES OF AMERICA, *County of Lake, State of Colorado.*

Know all men by these presents, that the county of Lake, in the State of Colorado, acknowledges itself to be indebted in the sum of one thousand dollars, lawful money of the United States for value received which sum of money said Lake county hereby promises to pay to ——— or bearer, at the office of the treasurer of Lake county with interest thereon at the rate of ten per cent. per annum, which interest shall be payable annually on the first day of April of each year,

at the office of the treasurer of Lake county, upon the surrender of the coupons hereunto annexed, as they mature, until the payment of said principal sum. This bond to be payable at the pleasure of the county, after ten years from the date of its issuance, but absolutely due and payable twenty years after the date of issue.

This bond is one of a series of fifty thousand dollars, which the board of county commissioners of said county are authorized to issue for the purpose of erecting necessary public buildings by virtue of and in compliance with a vote of a majority of the qualified voters of said county, at an election duly held on the 7th day of October, A. D. 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled "An act concerning counties, county officers and county government, and repealing laws on these subjects" approved March 24th, A. D. 1877, and it is hereby certified that all the provision- of said act have been fully complied with by the proper officers, in the issuing of this bond.

In testimony whereof, and in accordance with said act, the county of Lake hereby pledges its full faith, credit and property for the punctual payment of this bond and the interest thereon as aforesaid, and has authorized the same to be signed by the chairman of the board of county commissioners, and attested by the clerk of  
101 said county, as witness their hands and seal of said county, executed at Leadville the county-seat of Lake county, this — day of —, A. D. 1880.

[SEAL.]

\_\_\_\_\_,  
*Chairman of the Board of County Commissioners.*

Attested and sealed by—

\_\_\_\_\_,  
*County Clerk.*

County of Lake, State of Colorado. \$1,000.00.

Third. That said bonds shall be coupon bonds payable at the pleasure of the county ten years after the date of their issuance, but absolutely due and payable twenty years after such date.

Fourth. That there shall be annexed to each bond so issued eleven coupons upon which the annual interest as it falls due on said bonds shall be payable on presentation thereof to the treasurer of Lake county on the first day of April in each and every year; said coupons shall be numbered from one to eleven in the order in which they become due and be in form and in words and figures as follows:

The County of Lake in the State of Colorado will pay the bearer one hundred dollars at the office of the treasurer of Lake county on the first day of April. Interest on bond No. —.

Attested by—

\_\_\_\_\_, *Co. Clk.*

\_\_\_\_\_,  
*Ch'r'n B'rd Co. Com'rs.*

Fifth. The annual interest on said bonds is fixed and allowed at the rate of ten per cent. (10 %) per annum from their date until paid.

Sixth. That the interest on said bonds shall be payable annually on the first day of April of each year and the principal sum due or called in for redemption at the office of the county treasurer of said county of Lake.

Seventh. Said bonds shall each be signed by the chairman of this board, attested by the clerk of the county of Lake, bear the seal of the said county, countersigned, numbered and registered by the county treasurer, and numbered and registered by the county clerk in a book to be kept for that purpose by each of said officers in the order in which they are issued.

Each bond shall state upon its face the amount for which the same is issued, to whom issued and the date of its issuance, but no

bond shall be of less denomination than two hundred and 102 fifty dollars (\$250.00); said bonds so to be issued shall be for the following denominations, viz : thirty-nine bonds for one thousand dollars (\$1,000.00) and one bond for two hundred and fifty dollars (\$250.00) — be and the same is hereby re-enacted and adopted to issue the additional bonds of this county for the additional sum of thirty-nine thousand two hundred and fifty dollars (\$39,250.00) and that the committee of ways and means of this board be and they are hereby authorized and directed to take charge of the issue of said bonds, receive the same, and negotiate a sale of them for the highest and best price that can be obtained for the same, and deposit the proceeds of the sale in the treasury to the credit of the public building fund to the use of the county.

STATE OF COLORADO, }  
County of Lake, } ss :

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the county and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Leadville, this seventeenth day of November, A. D. 1893.

C. H. S. WHIPPLE,  
County Clerk,  
By MARK E. CARR, Deputy.

[Seal of Lake County, State of Colorado.]

Indorsed : No. 6. Commissioners' Record, Book No. 2, page No. 289. Copy. July 14, 1880. Order of Apr. 27, '80, rescinded and something attempted to be done with order of Oct. 27, '79, but just what it is does not appear. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court. 2758. Dudley vs. Lake Co.



## EXHIBIT 21.

STATE OF COLORADO, } ss:  
     County of Lake, }

At a meeting of the Board of County Commissioners for Lake County, Colorado, held at the court-house in the city of Leadville, on the 26th day of July, A. D. 1880, there were present:

Jos. Pearce, chairman,  
 O. M. Dearborn, commissioner,  
 F. T. Caley, commissioner,  
 Jos. H. Wells, clerk,  
 E. T. Wolverton, deputy,

when the following proceedings, among others, were had and done:

103 Proposition received from L. E. Roberts to buy \$10,250.00 of the new court-house bonds at 95c. he to have 90 days refusal of the balance at the same price.

Moved by Mr. Dearborn that Mr. Roberts' proposition be accepted; carried.

STATE OF COLORADO, } ss:  
     County of Lake, }

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the county and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Leadville, this 17th day of November, A. D. 1893.

C. H. S. WHIPPLE,  
     County Clerk.

[Seal of Lake County, State of Colorado.]

Indorsed: No. 7. Certified copy of order, Book 2, page —, made by the Board of County Commissioners of Lake County, Colorado, July 26, 1880. Proposition of L. E. Roberts for \$10,250 of bonds at 95c. accepted. 2758. Dudley vs. Lake County. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court.

\* \* \* \* \*

## EXHIBIT 23.

STATE OF COLORADO, } ss:  
     County of Lake, }

At a regular meeting of the Board of County Commissioners for Lake County, Colorado, held at the court-house, in the city of Leadville, on the third day of August, A. D. 1880, there were present:

Jos. Pearce, chairman,  
 J. H. Willard, commissioner,  
 O. M. Dearborn, commissioner,

Frank T. Caley, commissioner,  
 Jos. H. Wells, clerk,  
 E. T. Wolverton, deputy,  
 when the following proceedings, among others, were had and done,  
 to wit:

104 On motion it is ordered by the board that the bid of Mr.  
 Roberts of 95c. on the dollar for \$39,250.00 of Lake County  
 bonds, be accepted and ordered placed on file.

STATE OF COLORADO, }  
 County of Lake, } ss :

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board  
 of County Commissioners in and for the county and State aforesaid,  
 do hereby certify that the annexed and foregoing order is truly  
 copied from the records of the proceedings of the Board of County  
 Commissioners for said Lake County, now in my office.

In witness whereof I have hereunto set my hand and affixed the  
 seal of said county, at Leadville, this 18th day of Nov., A. D. 1893.

C. H. S. WHIPPLE,  
 County Clerk.

[Seal of Lake County, State of Colorado.]

Indorsed: No. 9. Certified copy of order—Book 2, page 328—  
 made by the Board of County Commissioners of Lake County, Colo-  
 rado, Aug. 30, 1880. Bid of L. E. Roberts for \$39,250 at 95c. be  
 accepted. 2758. Dudley vs. Lake County. Filed Dec. 21, 1893.  
 Robert Bailey, clerk U. S. circuit court.

\* \* \* \* \*

#### EXHIBIT 25.

Commissioners' Record.

Book No. 2, page No. 353.

Copy.

At the regular meeting of the board of county commissioners held  
 at the rooms of said board September 6th, A. D. 1880, held according  
 to law—

Present: Jos. Pearce, chairman,  
 Nelson Hallock, member,  
 O. M. Dearborn, member,  
 J. H. Willard, member,  
 Jos. H. Wells, clerk,  
 E. T. Wolverton, deputy.

1. On motion of Mr. Dearborn seconded by Mr. Willard it is or-  
 dered and resolved that the order of this board having for its object  
 and purpose the issue of bonds dated Oct. 27th, A. D. 1879,  
 105 and recorded in Book 2 on pages 94, 95, 96, 97 and 98 of the  
 county commissioners' record, and the order having for its  
 object and purpose the issue of bonds dated July 30th, A. D. 1880,

and recorded in Book 2 aforesaid, on pages 322, 323, 324, 325, 326 and 327 be and the same are hereby rescinded.

2. On motion it is ordered by the board that the following order be entered as a substitute for the two orders last rescinded.

Whereas heretofore, to wit, on the 4th day of September, A. D. 1879, an order was made by this board and entered on the record of the proceedings of this board, of which the following is a copy :

Whereas the necessities of Lake county require the erection of public buildings and the building and construction of public roads and bridges and there are no moneys in the treasury of said county to meet the necessary outlay required for such purposes, and a loan of a sufficient sum is required to meet such expenditures, and

Whereas the creation of such an indebtedness for those purposes is deemed necessary by this board and expedient at this time to appreciate the value of the obligation of said county :

It is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000.00).

And it is further ordered that the question of making such loan on the account of the county be and the same is hereby submitted to a vote of the electors of said county qualified to vote on said question at the next general election to be held in said county on the seventh day of October next in accordance with the general laws of Colorado in such case made and provided.

It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of submission to the electors of said county as the law requires.

And whereas, satisfactory evidence is adduced before this board of a full compliance with said order in relation to the submission of the question of making said loan to a vote of the electors of  
106 this county qualified to vote on the question at the general election held in said county on October 7th, A. D. 1879, and with the laws of Colorado in such case made and provided ;

And whereas it appears that in pursuance of the said order the clerk of said county caused a notice of such order, of which the following is a copy, to wit :

*Notice.*

To qualified electors :

Notice is hereby given to the electors of Lake county qualified to vote on the question that at a meeting of the Board of County Commissioners of said County of Lake held at Leadville, in said county, on the 4th day of September, A. D. 1879, an order was made by said board and entered of record in the proceedings of said board, of which the following is a copy :

Whereas the necessities of Lake county require the erection of public buildings and the building and construction of public roads and bridges and there are no moneys in the treasury of said county to meet the necessary outlay required for such purposes and a loan of a sufficient sum is required to meet such expenditures, and

Whereas the creation of such an indebtedness for those purposes is deemed necessary by this board and expedient at this time to appreciate the value of the obligation of this county :

It is therefore ordered by this board that the amount of money required for the erection of public buildings is the sum of fifty thousand dollars (\$50,000.00) and for the building and construction of roads and bridges is the sum of five thousand dollars (\$5,000.00).

And it is further ordered that the question of making such loan on the account of the county be and the same is hereby submitted to a vote of the electors of said county qualified to vote on said question at the next general election to be held in said county on the seventh day of October next in accordance with the general laws of Colorado in such case made and provided.

It is further ordered that the clerk of said county be and he is hereby authorized and directed to give and publish the notice of submission to the electors of said county as the law requires and that in pursuance of said order a vote of said electors will be taken by the judges of election at the respective polling places in the several election precincts of said county at the general election to be held on Tuesday, October 7th, A. D. 1879.

107 All persons voting on that question shall vote by separate ballot whereon is placed the words "For county indebtedness" or against county indebtedness and no person shall vote on the question unless he have the necessary qualifications of an elector as provided by law and shall have paid a tax upon property assessed to him in the county for the year immediately preceding said election.

By order of the Board of County Commissioners of Lake County.

JOS. H. WELLS,

*County Clerk and ex Officio Clerk of said Board.*

To be placed in a conspicuous place in each voting precinct in the county for at least thirty days previous to said election and

Whereas it also appears to this board that in the canvass of the votes cast in said county on said general election day upon the question of making such loan that a majority of the votes cast are for the county indebtedness and that therefore under the constitution and laws of Colorado this board is authorized to contract said debt in the name of the county for said specified purposes.

It is therefore ordered by this board as follows to wit :

First. That the bonds of Lake county to the amount of fifty thousand dollars be made and issued and a loan of money effected thereon to be used for the purpose of necessary public buildings.

Second. That said bonds so to be issued shall be in form and in the words and figures as follows :

No. —.

\$—.

UNITED STATES OF AMERICA, *County of Lake, Colorado.*

Know all men by these presents that the county of Lake in the State of Colorado, acknowledges itself indebted and promises to pay

to ——— or bearer five hundred dollars for value received redeemable at the pleasure of the county after ten years, and absolutely due and payable twenty years from the date hereof at the office of the treasurer of the county of Lake aforesaid in the city of Leadville in said county with interest at the rate of ten per cent. per annum payable annually on the first day of April of each year at the office of the county treasurer aforesaid upon delivery of the coupon hereto attached.

108 This bond is one of a series of like tenor the whole amounting to fifty thousand dollars which the Board of County Commissioners of said Lake County is authorized to issue for the purpose of erecting necessary public buildings pursuant to the provisions of chapter XXII of the General Laws of the State of Colorado being an act entitled "An act concerning counties, county officers and county government and repealing laws on these subjects" approved March 24th A. D. 1877.

In testimony whereof the Board of County Commissioners of said County of Lake has caused the seal of the said county and the signature of its chairman to be hereunto affixed and the same to be attested by the clerk of the county at Leadville, this — day of ——— A. D. 188—.

\_\_\_\_\_  
Chairman Board of County Commissioners.

Attest: \_\_\_\_\_,  
County Clerk.

§—. The County of Lake, in the State of Colorado. §—.

Will pay the bearer — dollars at the office of the treasurer of Lake county on the first day of April, 18—.

Interest on bonds for necessary public buildings.

No. —.

\_\_\_\_\_  
Chairman Board of County Commissioners.

It is further ordered that it be and hereby is made known to whom it may concern by said county of Lake through this the action and order of its board of commissioners duly and legally convened for the purpose of acting upon the business in hand that said county of Lake guarantees that all the provisions of the General Assembly of the State of Colorado entitled "An act concerning counties, county officers and county government and repealing laws on these subjects" approved March 24th A. D. 1887 are, have been, and will be fully complied with in the (issuing) of the bonds hereby ordered to be issued and the full faith credit and property of said county are hereby pledged to the prompt payment of the money secured by said bonds and the interest thereon as it becomes due.

On motion it is ordered that the new bonds substituted for the old ones bear the date of the old ones.

On motion it was ordered that eleven thousand (\$11,000.00) dollars of the said bonds so as aforesaid issued be exchanged with

109 Walter H. Jones for the amount of \$10,750.00 ten thousand seven hundred and fifty dollars of bonds heretofore issued by him he paying L. E. Roberts for the extra or additional amount of two hundred and fifty dollars (\$250.00) in said bonds according to the rate or sum at which said bonds were sold.

It is further ordered that said old bonds amounting to \$10,750.00 ten thousand seven hundred and fifty dollars so exchanged with said Jones be destroyed and cancelled.

On motion it is ordered by the board that thirty-nine thousand dollars (\$39,000.00) of said bonds so as aforesaid be issued to L. E. Roberts, Esq., pursuant of his bid and agreement heretofore accepted and that he receive for the \$250.00 in bonds in excess of said sum of thirty-nine thousand (\$39,000.00) the amount per dollar so bid by him from Walter H. Jones, pursuant to the above order and that the bonds heretofore issued to said Roberts, to wit, bonds amounting to (\$12,000.00) be returned by him to this board on the delivery of said new issue.

It is further ordered that the said old issue of bonds amounting to the said sum of twelve thousand dollars (12,000.00) be cancelled and destroyed.

STATE OF COLORADO, }  
County of Lake, } ss :

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Leadville, this twentieth day of November, A. D. 1893.

C. H. S. WHIPPLE,  
County Clerk.

[Seal of Lake County, State of Colorado.]

Indorsed: No. 11. Commissioners' Record, Book No. 2, page No. 353. Sept. 6, '80. Order of Oct. 27, '79, rescinded and substitute enacted. 2758. Dudley vs. Lake Co. Filed Dec. 21, 1893. Robert Bailey, clerk U. S. circuit court.

\* \* \* \* \*

110 Mr. BRYANT: The only other evidence I offer is a copy of the complaint in this case, for the purpose of showing that the suit was brought by Mr. Albert Grier, as attorney for the plaintiff. Mr. Wright and Mr. Rollins both testified that he was instructed to employ Messrs. Parks and Johnson. It is for the purpose of contradicting that statement, that is all.

Said complaint so offered, will be found in the record.

GEORGE R. ELDER, a witness produced, sworn and examined on behalf of the defendant, testified as follows:

Direct examination.

By W. H. BRYANT, Esq.:

Q. What is your full name, Mr. Elder?

A. George R. Elder.

Q. Where do you reside?

A. Leadville.

Q. How long have you lived in Leadville?

A. Since January, 1879.

Q. What has been your business?

A. Lawyer.

Q. I hand you this book and ask you to state where you got it?

A. I received this from the firm of C. C. Davis & Company, successors of the Leadville Democrat Company.

Q. Were you in Leadville at the time those papers were published?

A. I was in Leadville at the time these papers were published.

Q. Is that the form in which the Leadville Weekly Democrat was published at that time?

A. It was the usual form in which the Leadville Weekly Democrat was published. I was a subscriber to this paper, and the daily.

Q. I will ask you to look at the issue of February 7th, 1880, and state whether that is the usual form of the Weekly Democrat at that time?

A. It is, sir.

Mr. BRYANT: Now we offer the last column of page 8 of that paper, which purports to contain a semi-annual statement of the indebtedness of Lake county, signed by the officers of the county, signed by the chairman of the board of county commissioners, and attested by the clerk.

Plaintiff objected because immaterial and incompetent and not properly authenticated.

The COURT: I think the last objection is good, that it is not properly authenticated.

111 Mr. PARKS: Then it is immaterial and incompetent.

Mr. BRYANT: We offer to prove by a copy of the Leadville Weekly Democrat that there was published in the issue of February 7, 1880, a column article headed "Semi-annual statement of Lake county," which stated that it was the outstanding indebtedness of Lake county to Jan'y 1st, 1880; and that is signed by Joseph Pierce, chairman of the board, and attested by Joseph H. Wells, clerk of the board.

The COURT: You have not made any proof of that paper yet.

Q. Do you know anything about this being the files of the Leadville Democrat?

A. I went to the office of the Herald-Democrat, and asked them for their files for 1880, and they presented me with that volume. I did not know of its existence until within the last 10 days.



(Mr. PARKS:)

Q. Is it not a fact that the Herald was published at the same time?

A. It was, and has since been consolidated with the Democrat.

(Mr. PARKS:)

Q. And the Herald itself was independent of the Democrat, and the Democrat separate and distinct from the Herald?

A. Yes, sir.

(Mr. PARKS:)

Q. So that that is not the present Herald-Democrat, but the old paper published by the Herald-Democrat Publishing Company?

A. (No answer)

(Mr. BRYANT:)

(—.) You have got the files of the Herald too?

A. I have the files of the Leadville Weekly Chronicle.

The COURT: I think you ought to prove this by somebody connected with the newspaper office.

To which ruling of the court the defendant by counsel then and there duly excepted, and exceptions allowed by the court.

Said newspaper article so offered and refused is in words and figures following:

EXHIBIT 28.

Mr. BRYANT: I will offer a certificate or statement of publication by C. C. Davis, proprietor of the Weekly Chronicle. I offer that together with an order of the board ordering the bill paid. 112 And here is an entry of the proceedings of the board in which they order it printed, and here is one ordering the bill for printing to be paid, and here is the certificate signed by Mr. Davis that it was published.

The COURT: I think I will admit the proof.

Mr. PARKS: We object to it because immaterial, incompetent, and not properly authenticated. There is no evidence here accompanying it or in this case showing that the board of county commissioners ever made this semi-annual statement officially or otherwise, or signed and executed it and had it recorded in the office of the county clerk of Lake county, who is *ex officio* clerk of the board, as the law requires. The only authentication of it, if at all, is that it simply purports to be the semi-annual statement of January 1st, 1880, some six months before these bonds were issued. It is a statement purporting only to be signed by somebody and copied out of some paper; the warrants might have all been paid by that time. There is no evidence showing and proving that the supposed original of the supposed copy statement was ever entered of record by the clerk of the defendant Board of County Commissioners in a book kept by him for that purpose only, as required by sec. 457 of the

General Laws of Colorado, 1879, in force at that time. It appears by the evidence of the witness, Newell, that no such book or record was kept at the time, and no such record then made is in the office of the clerk and recorder of said defendant county, who is *ex officio* clerk of said defendant board. The said supposed copy of said supposed original statement does not show on its face what payments, if any, had been made upon the supposed debts therein enumerated, nor the rate of interest borne by the supposed debts, nor of what the debt consisted, nor a detailed account of the receipts and expenditures of the defendant county; nor does it show from what officer or on what account moneys had been received; nor the amounts and to what individuals or on what accounts such moneys had been paid, and the amounts; nor does it show the amount of deficit or the balance in the treasury. Nor does said supposed statement purport to give a detailed account of the receipts and expenditures of said defendant county for the preceding months, nor state the time when the receipts and expenditures dealt with were had and made; and, generally, that said supposed statement is not such an one as is required and contemplated by sec. 457 of the General Laws of 1879 of Colorado, in force at the time such supposed statement is supposed to have been made and published. The proof of publication of the supposed copy of the supposed original statement is insufficient and inadmissible for the reason that it is not the proof made, if any was ever made, at the time

113 of the supposed publication of the original statement. There is no evidence that proof of publication was made at the time of and upon the supposed original. If it was, such proof would necessarily bear date as of the time of publication, whereas the proof of publication attached to the supposed copy was made Dec. 16th, A. D. 1893, more than thirteen years after the date of such statement and its alleged publication. The affidavit of said C. C. Davis attached to said supposed statement is therefore incompetent and cannot be received to prove such publication. The said supposed copy of said supposed original statement shows on its face that it is not and cannot be a true copy of the supposed original, for the reason that the original proof of publication annexed to the original would of necessity bear date as of the date, or near the date, of the publication of the original; that the original itself would be inadmissible as evidence without proof of publication attached thereto, and such original may not be evidenced by copy unless in due time and form made, published and filed, with proof of publication attached, with the clerk of the defendant Board of County Commissioners, and by him recorded in a book by him kept for that purpose, as required by said section of said law. Without competent proof of publication the said supposed copy statement, or its supposed original, cannot be admitted as evidence of the supposed facts which they contain. There is no proof whatever of the existence of the supposed original of the supposed copy statement, neither of its existence or that it was made and executed by any or either of the officers who purport to have executed the same. For aught that appears in evidence the supposed original was never made or executed by any authority

whatever. The orders of the board are also signally incompetent and prove nothing conclusively regarding the statement offered.

The COURT: He offers it in connection with the certified copy of the orders of the county commissioners. This paper alone would not be admissible, as I understand it, but he offers it in connection with the order of the board ordering it published in this newspaper, and ordering its payment.

Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

114 The various exhibits referred to in the foregoing offer are in words and figures following, to wit:

### EXHIBIT 29.

#### *Semi-annual Financial Statement of Lake County.*

Showing the outstanding indebtedness of Lake county on January 1, A. D. 1880, as appears by the records in the office of the clerk of said county, as required by law.

#### *Expenditure Account, General Fund.*

	Dr.	Cr.
County clerk's fees.....	\$1,150.00	
County assessor's fees.....	2,467.93	
County attorney's fees.....	1,390.28	
Sheriff's fees.....	9,906.77	
County physician's fees.....	720.67	
County school sup't.....	75.00	
County commissioners' fees.....	2,572.78	
County surveyor's fees.....	347.00	
County coroner's court fees.....	1,322.75	
Justice's fees.....	3,378.75	
Constable's fees.....	1,171.35	
Justice court fees.....	1,092.85	
District court fees.....	8,686.30	
County court fees.....	503.44	
County jail expenses.....	15,913.01	
Expense of county prisoners.....	1,768.70	
County poor expenses.....	11,709.17	
Purchase of court-house.....	10,552.00	
Books and stat'y for Co. offices.....	5,811.86	
County printing.....	863.70	
Furniture and repair Co. offices.....	5,697.16	
Transcript of records.....	6,349.05	
County gauger's expenses.....	379.32	
Auditing accs. between Lake and Chaffee counties.....	975.00	
Election expenses.....	1,036.80	
Commissioners' expenses.....	50.00	
Interest paid on warrants.....	182.61	
Total expenditures.....	\$96,074.24	

By amount of warrants cancelled . . . . .	11,777.96
By outstanding indebtedness of Lake county in county warrants January 1, A. D. 1880, to balance . . . . .	84,296.28
Total . . . . .	<u>\$96,074.24</u>

115

*Expenditure Account, Road Fund.*

Total expenditure on county roads, in repair- ing, making and bridging . . . . .	\$3,101.84
Interest paid on warrants . . . . .	69.28
Total expenditures . . . . .	<u>\$3,171.12</u>
By amount of road warrants cancelled . . . . .	\$2,320.59
Outstanding indebtedness of Lake county in road warrants January 1, A. D. 1880 to balance . . . . .	851.59
	<u>\$3,172.12</u>

*Statement*

Showing the account of the several funds, as per semi-annual state-  
ment had with the county treasurer, January 1, A. D. 1880.

*County Fund.*

Tax levy A. D. 1879 . . . . .	\$34,856.28
Additional assessments . . . . .	32.20
Cash, keeping U. S. prisoners . . . . .	27.00
	<u>\$34,915.48</u>
County warrants cancelled . . . . .	\$8,302.96
Delinquent tax . . . . .	25,991.96
Cash in treasury to balance . . . . .	620.56
	<u>\$34,915.48</u>

*State Fund.*

Tax levy A. D. 1879 . . . . .	\$13,942.04
Additional assessments . . . . .	12.90
	<u>\$13,954.94</u>
Account delinquent tax . . . . .	\$10,394.25
Cash in treasury to balance . . . . .	3,560.69
	<u>\$13,954.94</u>

*General School Fund.*

Amount paid in by State auditor . . . . .	\$92.35
Fines from Justice Stansell's court . . . . .	215.00
Fines from Justice Ballou . . . . .	95.00
Tax levy A. D. 1879 . . . . .	10,456.51
Additional assessments . . . . .	9.65
	<u>\$10,868.51</u>

116	By district treasurer's (couchers) cancelled.....	\$265.35
	By delinquent tax.....	7,795.60
	By cash in treasury to balance.....	2,807.56
		<hr/>
		\$10,868.51

*Special School Fund, District No. 2.*

	Tax levy A. D. 1879.....	\$31,127.32
	Additional assessments.....	32.20
		<hr/>
		\$31,159.52
	By delinquent tax.....	\$23,818.73
	By cash to balance in treasury.....	7,340.79
		<hr/>
		\$31,159.52

*Road Fund.*

	Tax levy A. D. 1879.....	\$17,430.61
	Additional assessments.....	16.11
		<hr/>
		\$17,466.72
	By road warrants cancelled.....	\$2,320.59
	By delinquent tax.....	12,993.75
	By cash in treasury to balance.....	2,132.38
		<hr/>
		\$17,446.72

*Contingent Fund.*

	Tax levy A. D. 1879.....	\$2,933.00
	Additional assessments.....	6.00
	Cash for county building.....	1,049.00
		<hr/>
		\$3,988.00
	By delinquent tax.....	\$2,822.00
	By cash in treasury to balance.....	1,166.00
		<hr/>
		\$3,988.00

*Mute and Blind Fund.*

	Tax levy A. D. 1879.....	\$696.74
	Additional assessment.....	.64
		<hr/>
		\$697.38
	By delinquent tax.....	\$519.33
	By cash in treasury to balance.....	178.06
		<hr/>
		\$697.38

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*University Fund.*

Tax levy A. D. 1879.....	\$696.74	
Additional assessment.....	.64	
	<hr/>	
	\$697.38	
By delinquent tax.....		\$519.33
By cash in treasury to balance.....		178.05
		<hr/>
		\$697.38

*School of Mines Fund.*

Tax levy A. D. 1879.....	\$696.74	
Additional assessment.....	.64	
	<hr/>	
	\$697.38	
By delinquent tax.....		\$519.33
By cash in treasury.....		178.05
		<hr/>
		\$697.38

*Agricultural Fund.*

Tax levy A. D. 1879.....	\$696.74	
Additional assessment.....	.64	
	<hr/>	
	\$697.38	
By delinquent tax.....		\$519.33
By cash in treasury..		178.05
		<hr/>
		\$697.38

*Insane Fund.*

Tax levy A. D. 1879.....	\$696.74	
Additional assessment.....	.65	
	<hr/>	
	\$697.39	
By delinquent tax.....		\$519.33
By cash in treasury to balance.....		178.06
		<hr/>
		\$697.39

*Military Roll Fund.*

Tax levy A. D. 1879.....	\$1,466.50	
Additional assessment.....	3.00	
	<hr/>	
	\$1,469.50	
By delinquent tax.....		\$1,411.50
By cash in treasury to balance.....		58.00
		<hr/>
		\$1,469.50

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*Interest on Bonds Fund.*

Tax levy A. D. 1879.....	\$1,059.46	
Additional assessment.....	1.00	
	<u>\$1,060.46</u>	
By delinquent tax.....		\$782.29
By cash in treasury to balance.....		277.17
		<u>\$1,060.46</u>

*City of Leadville Tax.*

Tax levy A. D. 1879.....	\$47,751.44	
Additional assessment.....	64.40	
	<u>\$47,815.84</u>	
By delinquent tax.....		\$36,155.80
By cash in treasury to balance.....		11,660.04
		<u>\$47,815.84</u>

*County License Fund.*

To amount paid in for license.....	\$3,475.00	
	<u>\$3,475.00</u>	
By amount in county warrants cancelled....		\$3,475.00

*City of Malta Fund.*

To am't tax levy A. D. 1879... ..	\$2,512.12	
	<u>\$2,512.12</u>	
By delinquent tax.....		\$2,288.47
By cash in treasury to balance.....		223.65
		<u>\$2,512.12</u>

STATE OF COLORADO, }  
 Lake County, } ss:

It is hereby certified that the above and foregoing is a true and correct statement of the financial condition of said county showing the amount of indebtedness of said county, outstanding in county and road warrants January 1, A. D. 1880, that the same is also a true and correct statement of the condition and standing of the different funds as shown by a settlement had with the county treasurer by the board of county commissioners January 1, 1880, as appears from the report and accounts of said treasurer received on said date.

By order of the board of county commissioners of said county.  
 JOSEPH PEARCE, *Chairman.*

Attest: JOSEPH H. WELLS.  
*Clerk of the Board.*



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*Proof of Publication.*

STATE OF COLORADO, }  
*County of Lake,* } ss.:

C. C. Davis being first duly sworn, deposes and says that he is the proprietor of the Carbonate Chronicle, a weekly newspaper published at Leadville in Lake county in the State of Colorado; that the notice of the semi-annual financial statement of Lake county, Colorado, showing the outstanding indebtedness of Lake county, Colorado, on January first, A. D. 1880, of which a copy is hereto attached was published in said newspaper, in its issue dated the seventh day of February, A. D. 1880.

C. C. DAVIS.

Subscribed and sworn to before me this sixteenth day of December, A. D. 1893.

[SEAL.]

MILLARD C. YOTHERS,  
*Notary Public.*

My commission expires March 21, 1897.

## EXHIBIT 30.

STATE OF COLORADO, }  
*County of Lake,* } ss.:

At a regular meeting of the Board of County Commissioners for Lake County, Colorado, held at the court-house, in the city of Leadville, on the 26th day of January, A. D. 1880, there were present:

Joseph Pearce, chairman,

G. M. Gerrish, commissioner,

Jos. H. Wells, clerk,

By E. T. Wolverton, deputy,

when the following proceedings, among others, were had and done, to wit:

On motion it is ordered that the semi-annual statement of the financial affairs of the county as required by section No. 447 of the General Laws of Colorado be made by the clerk of this board, and when so made, approved by this board, signed by the chairman, and attested by the county clerk, that the same be published in the Carbonate Weekly Chronicle, and the Leadville Weekly Democrat, two weekly newspapers published in said county of Lake.

STATE OF COLORADO, }  
*County of Lake,* } ss.:

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board of County Commissioners in and for the County and  
 120 State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Lake County, now in my office.

Seal of Lake County, In witness whereof, I have hereunto set  
 State of Colorado. my hand and affixed the seal of said county,  
 at Leadville, this 16th day of Dec. A. D. 1893.

C. H. S. WHIPPLE,

*County Clerk.*

Indorsed: 2758. U. S. circuit court. Certified copy of order—  
 H. H. Dudley vs. Lake Co.—made by the Board of County Com-  
 missioners of Lake County, Colorado, — 188—. Order of board  
 to clerk to publish semi-annual statement. Filed Jan. 11, 1894.  
 Robert Bailey, clerk U. S. circuit court.

### EXHIBIT 30.

STATE OF COLORADO, }  
*County of Lake,* } ss :

At a regular meeting of the Board of County Commissioners for  
 Lake County, Colorado, held at the court-house, in the city of Lead-  
 ville, on the 10th day of Dec. A. D. 1880, there were present:

Joseph Pearce, chairman,

G. M. Gerrish, commissioner,

Jos. H. Wells, county clerk,

By E. T. Wolverton, deputy,

when the following proceedings, among others, were had and done,  
 to wit:

On motion is is ordered that the following-named persons be  
 allowed the amounts set opposite their names and warrants ordered  
 drawn in the county fund for the same.

Leadville, Democrat prt. ann. statement, \$20.00.

STATE OF COLORADO, }  
*County of Lake,* } ss :

I, C. H. S. Whipple, county clerk and *ex officio* clerk of the Board  
 of County Commissioners in and for the County and State aforesaid,  
 do hereby certify that the annexed and foregoing order is  
 121 truly copied from the records of the proceedings of the Board  
 of County Commissioners for said Lake County, now in my  
 office.

In witness whereof I have hereunto set my  
 Seal of Lake County, hand and affixed the seal of said county at  
 State of Colorado. Leadville, this 16th day of Dec., A. D. 1893.

C. H. S. WHIPPLE,

*County Clerk.*

Indorsed: 2758. U. S. circuit court. Certified copy of order,  
 H. H. Dudley vs. Lake County, made by the Board of County Com-  
 missioners of Lake County, Colorado, — —, 188—. Order allow-  
 ing bill for publication of semi-annual statement. Filed Jan. 11,  
 1894. Robert Bailey, clerk U. S. circuit court.

Mr. BRYANT: Now, I would like to intraduce a certified copy of  
 the bond register, showing that these bonds were issued on the 30th

of December, 1879, and were afterwards reissued, but the identical bonds which were originally issued were afterwards reissued in 1880; so that the indebtedness was actually contracted on the 31st of December, 1880.

Plaintiff objected because immaterial, incompetent, irrelevant as regards the proceedings of the board.

The COURT: When was the election held?

Mr. PARKS: October 7, 1879.

Objection overruled. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

The COURT: Were these bonds issued and delivered, or subsequently called in? If that is so you may offer your register.

Mr. BRYANT: Some of the bonds issued on the 31st of December, 1879, are actually outstanding at the present time; and there is something peculiar about the bonds, because the records here show that some of them were canceled and not issued until along in September, 1880, although they all bear the same date. Those are the ones that are sued on in this case, the first \$11,000 worth still bear the date of December 31, 1879, and they are all of one issue, authorized by one vote of the people.

The COURT: Do you say \$11,000 of the bonds are now outstanding?

Mr. BRYANT: Yes, sir, that is my understanding of it.

122 The COURT: What does the record show about it, Mr. Bryant?

Mr. BRYANT: Yes, sir, it shows that the bonds 67—which are the ones in suit in this case—some of them, at least, from 67 up to 129, all of which are in suit in this case, are still outstanding. No, that they are dated in 1880; that is right; those that were reissued at that time were reissued July 31st, and according to this it seems to be July 31, 1879. I think it means July 31, 1880. Here are the ones that I had reference to, bonds 55 to 66, dated December 31, 1879, for \$1,000, are still outstanding: 10 of them for \$1,000 and 2 for \$500 are still outstanding.

The COURT: They are not the bonds in this case?

Mr. BRYANT: They are the bonds of Walter H. Jones, of whose estate I believe Mrs. Jones is executrix, that is to say, these were issued to Mr. Jones. That \$11,000 worth of bonds bears date Dec. 31, 1879, and are some of the bonds included here.

The COURT: You may offer that, then.

Mr. BRYANT: Here is the original bond register which shows that.

The COURT: A certified copy will do.

To which ruling of the court the plaintiff by counsel then and there duly excepted and exceptions were allowed by the court.

Said exhibits so received in evidence is in words and figures following:

\* \* \* \* \*

And thereupon the plaintiff to further maintain the issues on his behalf, gave in rebuttal as follows:

DANIEL E. PARKS, recalled on behalf of the plaintiff, testified as follows:

Direct examination.

By H. B. JOHNSON, Esq.:

Q. You may state briefly what knowledge you have of the public indebtedness of Lake county in 1879 and 1880?

Mr. BRYANT: We object to Mr. Parks stating it briefly or at length, because it is not the best evidence of what the public indebtedness was. His knowledge of what it was would not be evidence.

123 Objection overruled. To which ruling of the court the defendant by counsel then and there duly excepted, and exceptions were allowed by the court.

A. Yes, sir, I know something about the indebtedness of Lake county; I know a great deal of it. I was attorney for the county from the 11th day of Feb. 1879, when the county was organized, until the 15th day of April, 1880, when I resigned. I was reappointed on the 23rd day of April, 1883, and served until the 1st of January, 1890.

Q. On page 2 of this county clerk's account book, the indebtedness of the county is summed up on July 1st, 1880, as \$198,394.57, purporting to be an outstanding indebtedness of Lake county in county warrants.

A. What is the date of that?

Q. July 1, 1880. You may state if you know what proportion of those warrants have been adjudicated to be void and not binding upon the county.

Defendant objected because immaterial. Objection sustained. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

A. I can state generally—

The COURT: I sustained the objection to that question. You cannot prove that question in that way.

Q. You may state whether or not you took an account of these warrants, comparing each one with the public indebtedness outstanding at the date of each warrant, to ascertain which of these warrants were issued within and which without the constitutional limitation.

A. Yes, sir. That assumes that I took that account manually; I did not do it. I will tell you how it was done.

Mr. BRYANT: If he did not take it we will object.

WITNESS: It was done under my supervision.

Mr. BRYANT: He has answered that question, and I do not think there is anything before the court now.

The COURT: He has modified his answer by saying that it was done under his supervision.

Q. You may state whether or not any, and, if so, what portion of these warrants went into the funding bonds that were issued in 1881.

Mr. BRYANT: I object, because it is a matter of record, which can be proved by the records of the county.

124 Objection sustained. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

Mr. BRYANT: They have a lot of suits now, going back of these warrants and picking each out, which are good or not.

A. Yes, sir, they are proving them—

Q. Yes, you may state whether any of these warrants were sued upon in the case of Rollins against Lake County.

A. In the case of Frank W. Rollins against the Board of County Commissioners of Lake County, in this court?

Mr. BRYANT: I object to their proving any matter in litigation except by the records of the court.

A. The records of the court will show that.

Objection sustained. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were duly allowed by the court.

Mr. JOHNSON: I offer to prove by the witness that these warrants that constitute the entire outstanding indebtedness, according to this book, of Lake county, on July 1, 1880, either went into the issue of \$500,000 of funding bonds, that were issued by Lake county in 1882, or were involved in the case of Rollins against Lake County, in both of which cases the warrants were held illegal and void by the Supreme Court of the United States, and the county released from the payment of that indebtedness. Now, to support that offer I suggest to the court that the public records would not show the date of these warrants; when they were funded they were canceled or destroyed. That funding was the funding of the entire outstanding warrant indebtedness of the county, as it had to be under the law, and when these warrants were given up and bonds given in their place, they were canceled and destroyed, and it is impossible to follow each particular warrant that went into those funding bonds. There was \$500,000 of these warrants funded.

The COURT: It would be a dangerous proceeding to admit proof of those matters in the way you undertake to do it. I am satisfied now, under the decision of the appellate court, while I thought otherwise at the former trial, and I still think that the other record is the proper record, but I believe, under this decision, that you are bound to take notice of that record and what it showed, if it showed outstanding indebtedness in excess of the sum set by the constitu-

125 tion, you are bound to take notice of it. I ruled before that you are not bound to take notice of this record, but this case compels me to rule otherwise, very much against my personal views.

Mr. JOHNSON: I suppose your honor will take notice that this whole amount may be illegal.

The COURT: Yes, sir. I think you are bound by that record. That is my view of it. If that record shows the outstanding indebtedness, and the contest when we were here before was whether or not you were obliged to take notice of this record, it not being a record kept as required by law, and to go into the question of the validity of all these claims, I do not propose to do it in this litigation. If you can prevail upon the court of appeals to sustain my former ruling, which I thought then was right, and which it seems to me would be proper yet, but as they seem to differ with me, I of course submit to their views about it.

Mr. JOHNSON: Then that we may get the benefit of the ruling of the court, I desire to prove by the records of the decisions in the Lake County case against Rollins and Lake County *vs.* Graham, and by other record evidence of this and other courts, and by the records of Lake county, that the indebtedness summed up as outstanding indebtedness of Lake county, in county warrants, July 1st, 1880, on page 2 of the book entitled "County Clerk's Account Book," a transcript from which has been admitted in evidence has all been adjudicated and held to be void by the courts, and that as a matter of fact, it was illegal and void at the time it was issued.

Mr. BRYANT: We object to it upon the ground that he has not got the records here to prove any such thing, and that there is no record evidence shown to the court that would tend to support any such proposition, and that it is immaterial, irrelevant and incompetent, and not the proper way of proving the invalidity of this debt.

Objection sustained. To which ruling of the court the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

If the gentleman insists on putting the objection on the ground that it is not here, we desire to obtain the records. Many of the records are in this court. I think the court had indicated that it would exclude them if we got them, but I do not think it is fair to urge that they are not here.

Mr. BRYANT: I have no objection to your putting in a certified copy of the records in the case of Lake County *vs.* Graham and Lake County *vs.* Rollins.

126 The COURT: No, we will not do that; supply your records.

Mr. BRYANT: I have no objection, except upon the ground that if the records should show that this bond issue was void, but when they said that it shows all of them—it does not show all of them. I will admit that \$40,000 worth of them were void.

Mr. PARKS: Inasmuch as the gentleman on the other side is speaking of a record, if the court will permit me to go to my office I will return with a copy of an order that the board of county commissioners made on the 18th day of October, 1886, in which the

board under my direction—there was an account taken and it points out the legal indebtedness, and whether it is to be paid and whether the balance was to be disregarded; identifies the only legal debts of the county outstanding prior to the passage of the order.

The COURT: No, sir; we will not do that.

Mr. PARKS: We make that offer, then, and offer to prove that.

The COURT: You cannot make the offer. You have not your record here and could not offer it. You may bring the record in here, and it will be excluded, and you may have an exception, if you want it. Give your statement for what it will show.

Mr. JOHNSON: As Mr. Parks has now procured the order he referred to, we will offer this copy of the order of the board of county commissioners of Lake county.

Mr. BRYANT: We object. In the first place, it is not certified to, and it shows that it is a copy of a certified copy.

Mr. PARKS: I will go on the stand and testify that I drew and prepared the original order and had it passed by the board, and that this is a copy of the original.

Mr. BRYAN: You made it from a certified copy, did you? Then we will also object to it on the ground that it is immaterial, irrelevant, and incompetent, because it was made in 1886, six years after these bonds were issued, and because it purports to be a statement on the part of the board of county commissioners, as I understand it, that certain indebtedness was legal and certain indebtedness was illegal, and they are not the proper tribunal to decide any such question as that.

The COURT: The first ground of the objection, that it is a copy, is not well taken, although on the last ground I will sustain the objection, that it is incompetent.

127 Mr. PARKS: Well, then, I will show that it is competent.

The court is not advised of what the order is.

The COURT: I am advised of what you said it was, that it was a statement by the board of county commissioners on the validity of its indebtedness.

Mr. PARKS: It is an order of the board of county commissioners, made on the 18th day of October, 1886, as the result of taking an account of the outstanding indebtedness, in which they recognized and ordered to be paid, the legal portion of the debt outstanding, including this indebtedness, and directing the treasurer not to pay the invalid part. This record shows the indebtedness as they ascertained it, to amount to \$24,815.90; by including the valid warrant indebtedness they by necessary implication exclude the payment of all other indebtedness, much of which is included by this evidence offered here by defendant in the form of warrant registry, clerk's account, etc.

The COURT: The objection is sustained. Let it be filed as an exhibit in the case.

To which ruling of the court the plaintiff by his counsel then and there duly excepted, and exceptions were allowed by the court.

Said exhibit so excluded is in words and figures following:

\* \* \* \* \*



Mr. BRYANT: In regard to the other offer made by Gen. Johnson, I am willing that the record may show that the Supreme Court of the United States declared that a certain bond issue of \$500,000 in 1882 was illegal and void, and that they also held that some \$40,000 of these warrants issued some time prior to 1882 were also illegal.

Mr. PARKS: Will you include in your admission that part of the bonds referred to, covered \$500,000 of the warrant indebtedness of the county, a large portion of which is the same as that covered by these exhibits that you have before you in evidence?

Mr. BRYANT: I do not think so. The county had a right to issue a certain amount. I will not admit it, because I do not think it is true.

Mr. PARKS: Then we offer to prove that.

Mr. BRYANT: I do not want the record to show that they were permitted to come here and offer to prove from these records certain things, which the records themselves do not contain.

128 The COURT: You do not make any further offer as to this last matter suggested, do you?

Mr. JOHNSON: I think we might offer—I think enough appears by the opinions, the two decisions of the court. I offer the opinions of the Supreme Court in the Graham and Rollins cases.

Mr. BRYANT: We have no objection to them. That is, I do not know, if your honor please, whether those opinions show the amount of the bonds that were sued upon. They show the amount of the bonded indebtedness. We will not make any objection to the opinions, because they have not any certified copy here, but I will object to them on the ground that they are immaterial, incompetent and irrelevant in this suit, as tending to show that a part of this indebtedness was illegal—

The COURT: The objection is sustained on that ground. I thought you said you admitted it without objection.

Mr. BRYANT: I do not think we care to admit it. I do not think the opinion shows the amount of the warrants. It shows the amount of the bonds. In the case of Lake County against Rollins it simply states that it was a suit against the county of Lake, was based on a large amount of warrants issued for the ordinary county expenses, and does not give the amount of them anywhere. In Lake County vs. Graham it was a suit for \$7,280 worth of coupons. If you want to offer that, I will simply make the general objection that it is immaterial, incompetent and irrelevant.

The COURT: I will sustain it if you make your objection on that ground. I do not think it has anything to do with this case.

Mr. JOHNSON: Then we will offer the pleadings in this case to show what was involved in those cases.

The COURT: Go ahead and bring them in and offer them. I do not propose to go into this because there was no offering of fact. It is a matter about which counsel ought not to have any trouble.

Mr. BRYANT: I am willing to admit that the amount of warrants issued was about \$40,000, for the purpose of saving time.

The COURT: Does that do away with the necessity of offering those—

Mr. JOHNSON: I think it would.

129 Mr. BRYANT: I am willing to admit that the United States Supreme Court declared that \$40,000 of the warrants issued by Lake county prior to 1882 were illegal and void, and if that is material and relevant, why you are entitled to that evidence.

Mr. JOHNSON: The record will show that they were these warrants issued in 1879 and 1880 altogether.

Mr. BRYANT: I will admit that the record shows those facts, but that it is not material evidence.

Mr. JOHNSON: Do you admit that these warrants are for some indebtedness prior to July 1st, 1880?

Mr. BRYANT: I do not know that the records will show that. It was indebtedness prior to bringing that suit, whatever it was. This was filed in 1887.

Mr. JOHNSON: It gives the record there.

Mr. BRYANT: There is \$70 of the warrants here, in 1880—prior to 1881. I will admit those, and the balance of them were—I will admit that \$70 of this indebtedness is illegal. It shows there; there is a list of them.

The COURT: These warrants as shown there are September, 1881.

Mr. BRYANT: There are \$70 before 1881, and the balance are all after 1881. I say that we will admit that there was \$70 worth of the indebtedness sued upon in the Rollins case against Lake county, which was included within the warrants set out in this warrant register, but we object to all of it as immaterial, incompetent and irregular.

Mr. JOHNSON: I suppose you will admit that all these warrants went into those funding bonds.

Mr. BRYANT: I do not know as to that. A lot of these are paid. They were the outstanding indebtedness at the time these bonds were issued, and were then afterwards paid, and of course cease to be an indebtedness. I do not know how many of them went into the funding bonds.

Mr. PARKS: It shows it was indebtedness existing prior to Jan'y 1, 1880.

The COURT: These warrants in that suit, they were subsequent?

Mr. PARKS: Subsequent to the 1st of Jan'y, 1880.

130 The COURT: As to that offer I will sustain the objection, because it is not shown they were outstanding at the time these bonds were issued. Now, does that complete the record, gentlemen, as you want to make it?

Mr. JOHNSON: I think it does. I do not think of anything else we have at hand to introduce.

Plaintiff rests.

And thereupon the defendant by counsel requested the court to instruct the jury to return a verdict for the defendant. And thereupon plaintiff by counsel, requested the court to instruct the jury to return a verdict for the plaintiff. The court refused to so instruct

the jury to find for the plaintiff, and to which refusal of the court the plaintiff by counsel then and there and at the time duly excepted, and exceptions were allowed by the court.

The foregoing was all of the evidence offered and all the evidence adduced in this cause.

And thereupon the plaintiff requested the court to charge the jury as follows:

"The jury are instructed that the amendment to article eleven, section six, of the constitution of the State of Colorado, adopted November 6, 1888, operates to validate the bonds and coupons the validity of which is involved in this action, even though they may have been originally issued in excess of the valuation prescribed by the constitution or the statutes of Colorado."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as requested, the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

And thereupon the plaintiff requested the court further to charge the jury as follows:

"The court instructs the jury that the plaintiff in this cause, Harry H. Dudley, being a non-resident of the State of Colorado, and a citizen of the State of New Hampshire, as appears by the evidence in this case, had the legal right to purchase the bonds and coupons in question for the purpose of enforcing the same by this action, and such purchase as shown by the evidence in this case is lawful and valid and operated to transfer the legal title of said bonds and coupons to him."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as requested, the plaintiff by counsel then and there duly excepted, and exceptions were allowed by the court.

And thereupon the plaintiff by counsel requested the court to charge the jury as follows:

"The court instructs the jury that the sale of the bonds and coupons in question involved in this suit, to Mr. Edward W. Rollins, about the time the bonds were issued, as testified to by him and undisputed in this case, for a valuable consideration, made him a *bona fide* purchaser thereof for value and without notice of any claimed defect or invalidity of said bonds and coupons, and the *bona fides* of such purchase by him for value without notice, characterizes the said bonds and coupons so purchased and renders all subsequent purchasers thereof *bona fide* purchasers."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as (requestion), the plaintiff, by counsel, then and there and at the time, duly excepted, and exceptions were allowed by the court.

And thereupon the plaintiff by counsel requested the court further to charge the jury as follows:

"The jury are instructed that in determining whether the constitutional or statutory limitation was exceeded by the issuance of said bonds, they will take into consideration the assessed valuation

of 1880, in force at the time the bonds were issued, and not that of 1879, in force at the time of the vote of the people."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as requested, the plaintiff by counsel, then and there and at the time duly excepted, and exceptions were allowed by the court.

And thereupon the plaintiff requested the court further to charge the jury as follows:

"The jury are instructed that the validity of an obligation issued by a county, in so far as it is affected by the limitation of indebtedness, depends upon the state of the valid indebtedness outstanding at the time the obligation is issued, and if the jury believe from the evidence that the valid and outstanding indebtedness of defendant at the time of the issuance of the bonds in question, and including said bonds, did not exceed the limit prescribed by the constitution or the statute, then they will find a verdict for the plaintiff."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as requested, the plaintiff by counsel, then and there and at the time, duly excepted, and exceptions were allowed by the court.

And thereupon the plaintiff by counsel requested the court further to charge the jury as follows:

"The jury are instructed that the burden of proof to show that the valid outstanding indebtedness of defendant, at the time the bonds were issued, was such that, by the issuance of the bonds, the limitation of indebtedness prescribed by the constitution or the statutes of Colorado was exceeded, rests upon defendant."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as requested, the plaintiff by counsel, then and there and at the time, duly excepted, and exceptions were allowed by the court.

And thereupon the plaintiff by counsel requested the court further to charge the jury as follows:

"The jury are instructed that under the constitution as it stood at the time the bonds in question were issued, the people of a county having an assessed valuation of more than five millions, could authorize the contraction of a debt amounting to six dollars on each one thousand dollars of valuation, and that the validity of the debt thus contracted could not be affected by any outstanding indebtedness of such county."

The court refused to give said instruction to the jury; and to the refusal of the court to charge the jury as requested, the plaintiff by counsel, then and there and at the time, duly excepted, and exceptions were allowed by the court.

And thereupon the court instructed the jury to return a verdict for defendant, which was accordingly done, in the words and figures following, to wit:

"In the Circuit Court of the United States for the District of Colorado.

HARRY H. DUDLEY

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE.

We, the jury in the above-entitled cause, find the issues herein joined for the defendant.

(Signed)

C. H. McLAUGHLIN, *Foreman.*"

To which ruling of the court and the rendition of said verdict, the plaintiff by counsel, then and there and at the time, before the jury had left the box, duly excepted, and exceptions were allowed by the court.

133 And thereupon the plaintiff, by counsel, gave notice of a motion for a new trial.

And judgment was thereupon entered in favor of the defendant upon said verdict. To which judgment and the giving, rendition and entry thereof, by the court, the said plaintiff then and there, in due time, form and manner, duly excepted.

And thereafter and on the 8th day of January, A. D. 1896, the plaintiff filed in said court its motion for a new trial of said cause, which said motion is in words and figures following, omitting the caption :

"And now comes the plaintiff in the above-entitled action by H. B. Johnson and Daniel E. Parks, his attorneys and moves the court to set aside the verdict of the jury rendered upon the trial of the above-entitled cause, and the judgment entered thereon in favor of the defendant in said cause, and grant a new trial therein, to the said plaintiff, upon the merits of said cause, upon the following grounds :

First. The court erred in admitting improper evidence on the trial of said cause in favor of the defendant and against the objections of the plaintiff.

Second. The court erred in refusing to receive and admit proper evidence offered by the plaintiff on the trial of said cause, objected to by the defendant and offered and insisted upon by the plaintiff.

Third. The court erred in instructing the jury to render a verdict in said cause on the trial thereof in favor of the defendant and against the plaintiff.

Fourth. The court erred in receiving and admitting on the trial of said cause all and each part of the evidence offered by the defendant to show the outstanding indebtedness of the defendant county on the 31st day of December, 1880, when the bonds in suit were shown to have been made and issued.

Fifth. The court erred in refusing to receive and admit evidence offered by the plaintiff showing the outstanding indebtedness of the county at the time of the issuance of the bonds.

Sixth. The court erred in rendering judgment upon said verdict of said jury in favor of the defendant and against the plaintiff.

Dated this 8th day of January, A. D. 1896.

H. B. JOHNSON,  
DAN'L E. PARKS,  
*Attorneys for Plaintiff.*"

134 And thereafter and on the 17th day of January, A. D. 1896, the court having heard the argument of counsel for the respective parties on said motion for a new trial, doth deny the same.

To which action on the part of the court in denying said motion the plaintiff by counsel then and there and at the time duly excepted.

And the said plaintiff was thereupon allowed ninety days in which to prepare and tender his bill of exceptions herein.

And inasmuch as the said several matters so produced, given in evidence, had and done in said cause aforesaid, objected and insisted upon as aforesaid, had and done as aforesaid, do not appear by the record of the finding and judgment of said court aforesaid, the said attorneys and counsel for said plaintiff did then and there propose their aforesaid exceptions to the opinion, finding and judgment of the said court, and the judge thereof, and requested him to put his seal and signature to this bill of exceptions, containing the said several matters so produced, given in evidence and had as aforesaid in this cause, according to the form of the statute in such case made and provided; and thereupon the said judge, at the request of said counsel for said plaintiff, did put his seal to this bill of exceptions and sign the same pursuant to the aforesaid statute in such case made and provided, and on, to wit, the 15th day of April, A. D. 1896.

JOHN A. RINER, *Judge.* [SEAL.]

O K.

THOMAS, BRYANT & LEE,

*Def't's Att'ys.*

Indorsed: 2758. Harry H. Dudley, plaintiff, vs. The Board of County Commissioners of the County of Lake, Colo., defendant. Bill of exceptions. Filed April 15th, 1896. Robert Bailey, clerk. By Charles W. Bishop, deputy clerk.

*Assignment of Errors.*

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE,  
Colorado, Defendant in Error.

Of the December term of A. D. 1896.

135 Afterwards, on, to wit, the first Monday of December in the same term, before the judges of the United States circuit court of appeals for the eighth judicial circuit, at the city of St. Louis, in the State of Missouri, U. S. A., comes the said plaintiff in error, Harry H. Dudley, by his attorneys, Daniel E. Parks and H. B. Johnson, Esquires, and says that in the record and proceedings aforesaid there is manifest error and in this, to wit :

The circuit court of the United States for the district of Colorado, and the judge of said court, Hon. John A. Riner, presiding, erred signally in admitting, and also in excluding evidence and testimony on said trial, before the court and jury, against the objection of the plaintiff thereon and thereat, and in this, to wit :

First. Said court and judge erred in not, on motion of said plaintiff, striking out the testimony given in answer to the question : " Q. Her husband was a citizen of Colorado ? " on page 35 of the bill of exceptions in this cause, viz : " A. Yes, sir."

Second. The said court and judge erred in admitting the evidence and testimony offered by the defendant of the amount of indebtedness of the defendant County of Lake at the time the bonds were issued, to wit : the 31st day of July, A. D. 1880, the offer and discussion of the admissibility of which before the court, is shown at pages 71, 72, 73 and 74 of the bill of exceptions.

Third. The court and judge erred in allowing the witness Newell to answer the question propounded to him by defendant, viz : " Q. Does that show the amount of the indebtedness of the county, on the first day of January, 1880 ? " Said question appearing at page 75 of the bill of exceptions, the answer thereto being, " A. Yes, sir."

Fourth. The court and judge erred in allowing the witness Newell to answer the question propounded to him by defendant, viz : " Q. Does it give a statement of the condition of the county's finances at that time ? " said question appearing on page 76 of the bill of exceptions, the answer thereto being, " A. Yes, sir ; it should."

Fifth. The court and judge erred in allowing the witness Newell to answer the question propounded to him by defendant, viz : " Q. When do the records show that the county commenced to keep what is called a regular semi-annual statement book ? " said question appearing on page 76 of said bill of exceptions, the answer thereto being, " I have not examined those old books which were kept in the



office, only glanced over them, and I do not know when that  
136 book was started;" also "Q. This is the first book showing the financial condition of the county," the answer thereto being, "A. Yes, sir;" and also the question "Q. This is the beginning?" "A. Yes, sir;" also the question "Q. How far does that run from the time it begins?" said question beginning on page 75 of the bill of exceptions, the answer thereto being "A. It commences in January, 1880, and ends December 31st, 1887."

Sixth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Now, is that the only book kept, or that was kept by the county, which shows these facts?" said question being on page 77 of said bill of exceptions, the answer thereto being, "A. Yes, sir."

Seventh. The court and judge erred in admitting in evidence the county clerk's account book mentioned and testified to and about in witness Newell's testimony, on page 77 of the bill of exceptions.

Eighth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Now, Mr. Newell, will you indicate the pages which show the county's financial standing from the beginning of the book until the 31st day of December, I believe that is when these bonds were issued?" Said question appearing on page 77 of the bill of exceptions, the answer thereto being "A. It is found on pages 1, 2 and 3;" also in allowing said witness to answer the question "Q. Pages 1, 2, and 3 show the semi-annual statement to July 1st, 1880, is that right?" the answer thereto being, "A. Yes, sir."

Ninth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Page 1 shows the statement of January 1st, 1880?" said question appearing on page 78 of said bill of exceptions, the answer thereto being, "A. Yes, sir."

Tenth. The court and judge erred in allowing the witness Newell to answer the question "Q. Are there papers copies of these first and second pages, and certified to?" on page 78 of said bill of exceptions, the answer thereto being, "A. Yes, sir."

Eleventh. The court and judge erred in allowing the witness Newell to answer the question, "Q. Now, turn to pages 21 and 22, what does that show," on page 79 of the bill of exceptions, the answer thereto being, "A. It shows the county's indebtedness in 1879."

Twelfth. The court erred in allowing the witness Newell to answer the question, "Q. It shows the county's indebtedness at  
137 that time." "Q. Now turn to page 22, Mr. Newell, and tell us what that shows," said questions appearing on page 78 of the bill of exceptions, the answer thereto being "A. The indebtedness of 1881 and 1882."

Thirteenth. The court and judge erred in allowing the witness Newell to answer the question, "Q. What period does that end with?" said question appearing on page 78 of the bill of exceptions, the answer thereto being, "A. It ends with December, 1882."

Fourteenth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Now, can you give us from that book the amount of the outstanding indebtedness of Lake county

on the 1st day of January, 1880?" the answer thereto being, "A. Yes, sir."

Fifteenth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Now, then, tell us the amount of the indebtedness according to that book?" on page 78 of said bill of exceptions, the answer thereto being, "A. It is \$84,296.28."

Sixteenth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Does that book show the amount of the indebtedness of Lake county on the 1st day of July, 1880?" the answer thereto being, "A. Yes, sir, it does."

Seventeenth. The court and judge erred in allowing the witness Newell to answer the question, "Q. What was that amount?" on page 78 of the bill of exceptions, the answer thereto being, "A. It is given here as \$198,294.57."

Eighteenth. The court and judge erred in allowing the evidence offered by the defendant, beginning with the eighth line from the bottom of page 79 of the bill of exceptions, and ending with line 10 on page 80 of said bill of exceptions.

Nineteenth. The court and judge erred in allowing the witness Newell to answer the question, "Q. Does it show the amount of outstanding indebtedness on the 1st day of January, 1881?" said question being on page 80 of said bill of exceptions, the answer thereto being, "A. Yes, sir."

Twentieth. The court and judge erred in allowing the witness Newell to answer the question, "Q. What is the amount?" the answer thereto being, "A. \$293,063.20."

138 Twenty-first. The court and judge erred in allowing the witness Newell to answer the question "Q. According to that book, is that outstanding indebtedness which you mentioned evidenced by warrants or bonds?" said question appearing on pages 80 and 81 of the bill of exceptions, the answer thereto being "A. It is evidenced by bonds."

Twenty-second. The court and judge erred in overruling the question propounded by plaintiff, on cross examination of the witness Newell, on page 85 of said bill of exceptions, as follows: "Q. You are familiar with the statutes, are you not, about semi-annual statements?"

"The COURT: You need not ask a question of law."

Twenty-third. The court and judge erred in admitting in evidence the original clerk's account book, and the substituted copy thereof, the said substituted copy being Exhibit 9, beginning at page 88 and ending at page 94 of said bill of exceptions.

Twenty-fourth. The court and judge erred in admitting the evidence offered by the defendant and its counsel in the offer thereof shown at page 94 of the bill of exceptions, such evidence purporting to be certified transcripts of registry of county warrants and orders from the records of the defendant County of Lake, showing the issuance of county warrants of said county from time to time, the amount of them and the purpose of them, etc., certified to by the county clerk and recorder, beginning on the 7th day of October, A. D. 1879 and ending on the 31st day of December, A. D. 1880, the

said statements having various certificates attached thereto of other dates, and is included, as stated in said offer, said evidence being received and marked Exhibit No. 10, being contained in said bill of exceptions from pages 94 to 294 thereof; said evidence being intended to show the outstanding indebtedness of the county of Lake by the warrant registry of said county, enumerating the warrants issued by said county and registered in said registry lists during the time covered thereby.

Pages 99 to 105, inclusive and pages 112 to 121, inclusive, of said bill of exceptions, being schedules of road warrants issued by said county in the years 1879 and 1880, amounting to about the sum of \$50,000; pages 108, 109, 110 and 111 of said bill of exceptions being schedules of warrants issued on the building fund of said county, in the year 1880, amounting to about the sum of \$25,000; pages 103 and 107 of said bill of exceptions being schedules of warrants issued by said county upon the contingent fund, in the 139 year of 1880 between February 17th and June 1st, amounting to the sum of about \$10,000; pages 122 to 229 inclusive of said bill of exceptions, contains schedules of county warrants drawn upon the general fund, for and during the year of 1880, between January 5th and June 19th, amounting to about the sum of \$125,000; pages 230 to 293 of said bill of exceptions, being schedule of warrants drawn on the general fund of said county, during the year 1879, between February 11th and December 30th, amounting to the sum of about \$96,000. Said schedules each purport to show when said warrants were issued, to whom issued, on what account issued, when presented to the county treasurer for payment, the total amount paid, principal and interest, and when paid.

Said schedules are certified to by the county clerk of said defendant county, as being true copies of the record, and were offered in evidence to show the outstanding indebtedness of the said defendant County of Lake at the time of the issuance of the bonds in controversy, said bonds being issued July 31st, 1880.

Twenty-fifth. The substance of the evidence consisting of the clerk's original account book, and substituted copy thereof, contained in Exhibit 9, at pages 88 to 94 of said bill of exceptions, upon which error is hereby assigned, is as follows:

The account purports to state the financial status of the defendant county, and to state the same more particularly in reference to its outstanding indebtedness.

The balance struck on the first page of the account (bill of exceptions page 88) is \$96,074.24, the account being credited January 1st, 1880, by outstanding indebtedness in the sum of \$84,296.28.

The second page of said account (bill of exceptions page 89) purports to show an expenditure account, on account of the road fund, showing an outstanding indebtedness January 1st, 1880 on account of road warrants of \$1,850.53. Said last-mentioned page, and also page 3 of said statement (bill of exceptions pages 89 and 90), purports to show the outstanding warrant debt of the said defendant county on the 1st day of July, 1880, in the sum of \$217,057.75.

Page 4 of said account (bill of exceptions page 91) purports to

show as follows: First. The condition of the road fund and the warrant debt outstanding on that score, showing such warrant debt July 1st, 1880, to be \$10,918.15; also the expenditure account on account of county building fund, showing no indebtedness on that score; also the expenditure account of the contingent fund, showing no indebtedness on that score; also the expenditure account of county bond fund, showing the county bonds outstanding July 1st, 1880, in the sum of \$10,750.

Page 5 of said account (bill of exceptions page 92) purports to show general expense account and status of the county fund January 1st, 1881, showing the amount of warrants outstanding January 1st, 1881, at \$293,063.20.

Page 6 of said account (bill of exceptions page 93) is a further account of the road fund, showing the amount of road fund indebtedness outstanding January 1st, 1881, to be \$19,499.38.

Said page 6 also purports to show a county building fund account, in warrants outstanding January 1st, 1881, to the amount of \$120.65, and also an expenditure account on account of county bond fund, showing county bonds outstanding January 1, 1881, in the sum of \$50,000. The bonds in question in this action.

Twenty-sixth. The court and judge erred in admitting in evidence Exhibit No. 29, purporting to be a semi-annual financial statement of the said defendant County of Lake, set forth in the bill of exceptions at pages 339*d*, *e* and *f* and 340, and offered in evidence by the defendant and its counsel as appears at pages 339*a*, *b*, and *c*, of said bill of exceptions, against the objection of the plaintiff then and there made, by his attorneys, in due time, form and manner.

Said supposed semi-annual statement purports to show the outstanding indebtedness of said defendant County of Lake on January 1st, A. D. 1880, as the same appeared by the records in the county clerk's office. Page 1 of said supposed statement (page 339*d* of the bill of exceptions) purports to show the outstanding warrant indebtedness of the defendant county, January 1st, 1880, to be \$96,074.24, also the outstanding indebtedness of the defendant county in road warrants at the same date to be \$3,172.12.

Pages 2, 3 and 4 of said supposed statement (bill of exceptions pages 339*e* and *f*, and page 340) purport to be a statement showing an account of the several funds of the county, as per semi-annual statement made by the county treasurer January 1, A. D. 1880, by which the county fund is shown to contain \$25,000; the State fund to contain a balance of \$13,945.94; the general school fund, \$10,868.51; the special school fund, district No. 2, \$31,159.52; the road fund, \$15,000; the contingent fund, \$3,988; the mute and blind fund, \$697.38; university fund, \$697.38; the school of mines fund, \$697.38; the agricultural fund, \$697.38; the insane fund, \$697.38; the military poll fund \$1,469.50; the interest on bonds fund, \$1,060.46; the city of Leadville taxes \$47,815.84; county license fund, balanced, and the city of Malta fund, \$2,512.12.

Page 4 of said supposed semi-annual statement also purports to contain a certificate purporting to be signed by the chairman of the board of county commissioners of said county and by the clerk of

said county; also an affidavit which purports to be the proof of publication of the said supposed report, made by one C. C. Davis, and subscribed and sworn to before a notary public December 16th, 1893, more than 13 years after said supposed semi-annual statement was made; said affidavit states that the affiant is the publisher of the "Carbonate Weekly Chronicle," a weekly newspaper published in said county of Lake, and that the notice of the semi-annual financial statement of Lake county, Colorado, showing the outstanding indebtedness of Lake county on January 1st, A. D. 1880, of which a copy is attached, was published in said newspaper in its issue dated the 7th day of February, A. D. 1880.

Twenty-seventh. The court and judge erred in admitting in evidence the certified copies of the proceedings of the board of county commissioners of said defendant county, offered by said defendants, with the said supposed semi-annual financial statement, which said proceedings are marked Exhibit 30, and are contained on pages 341 and 342 of the bill of exceptions.

The said exhibit at page 341 of the bill of exceptions, under date of January 26th, 1880, purports to show that on motion it was ordered that the semi-annual statement of the financial affairs of the defendant county, as required by section 447 of the General Laws of Colorado, be made by the clerk of the board and when so made and approved by the board, signed by the chairman and attested by the county clerk that the same be published in the "Carbonate Weekly Chronicle" and the "Leadville Weekly Democrat" two weekly newspapers published in the defendant county. The said exhibit at said page also sets forth, under date of December 16th, 1893, the certificate of the county clerk of said defendant county, certifying that the supposed order was truly copied from the records of the proceedings of the defendant board, then in the office of the county clerk.

The said exhibit, at page 343 of the bill of exceptions, under date of December 10th, 1880, purports to show that on motion it was ordered that the following-named persons be allowed the  
142 amount set opposite their names, and warrants ordered drawn on the county fund for the same: "Leadville Democrat, prt. ann. statement, \$20.00."

The said exhibit at said page also sets forth, under date of December 16th, 1893, the certificate of the county clerk of the said defendant county, certifying that the supposed order was truly copied from the records of the proceedings of the defendant board, then in the office of the county clerk.

Said evidence in said exhibit being designed as a foundation to the introduction of said supposed semi-annual statement, and to evidence thereby that the defendant board had directed the semi-annual statement to be made and published, and that the defendant county had paid \$20 for publishing the same.

Twenty-eighth. The court and judge erred in admitting in evidence Exhibit 31, contained on pages 348 to 364, inclusive, of the bill of exceptions, as offered by the defendant and its counsel as shown on pages 343 and 244 of the bill of exceptions. Said Exhibit

31 purports to be a certified copy of the bond register of said defendant county, purporting to show the issuance of county bonds between December 30th, 1879 and August 1st, 1880; said registry purports to show the date of issuance, the number, to whom issued, the amount of interest due from April 1st, 1880 to April 1st, 1889. Pages 1 to 12, inclusive of said Exhibit 31, contained on pages 345 to 359 inclusive of the bill of exceptions, purport to show that the bond-registered and included in said pages of said exhibit were cancelled September 6th, A. D. 1880.

Said exhibit purports to show that all of said bonds were issued to L. E. Roberts and Walter H. Jones, bonds Nos. 55, 56, 56, 58, 59, 60, 61, 62, 63, and 64, inclusive, for one thousand dollars each, and bonds Nos. 65 and 66, for five hundred dollars each, being issued to said Jones, and that the balance of the said bonds were issued to said Roberts. Said exhibit also purports to show that interest has been paid upon said bonds up to about April 29th, 1886.

Said exhibit has attached thereto what purports to be the certificate of the county clerk of the said defendant county, dated January 8th, 1894, certifying that the same is a correct copy of the registry of county bonds known as public building bonds as the same appears of record in his office in the registry of bonds, on pages 1 to 10 inclusive. Said exhibit purports to show that there were two sets of bonds issued in the sum of fifty thousand dollars each, that the first set issued was taken up and cancelled, and that the second set issued is outstanding.

143 Twenty-ninth. The court and judge erred in excluding the evidence offered in the answer of Daniel E. Parks, to the following question: "Q. You may state, if you know, what portion of these warrants have been adjudicated to be void and not binding upon the county," contained on page 365 of the bill of exceptions, the ruling of the court thereon being shown at the top of page 366 of the bill of exceptions.

Thirtieth. The court and judge erred in excluding the evidence of the witness Parks, in answer to the question: "Q. You may state whether or not any, and if so, what portion, of these warrants went into the funding bonds that were issued in 1881," contained on said page 366 of the bill of exceptions.

Thirty-first. The court and judge erred in excluding the evidence of the witness Parks, in answer to the question: "Q. Yes, you may state whether any of these warrants were sued upon in the case of Rollins against Lake County," contained on page 467 of the bill of exceptions.

Thirty-second. The court and judge erred in overruling the offer of evidence made by the plaintiff and his attorneys on pages 367 and 368 of the bill of exceptions, as follows:

"I offer to prove by the witness (Parks) that these warrants fully constitute the entire outstanding indebtedness, according to this book, of Lake county, on July 1st, 1880, either went into the issue of \$500,000 of funding bonds that were issued by Lake county in 1882, or were involved in the case of Rollins against Lake County, in both of which cases the warrants were held illegal and void by



the Supreme Court of the United States, and the county released from the payment of that indebtedness, now, to support that offer I suggest to the court that the public records would not show the date of these warrants, when they were funded they were cancelled and destroyed. That funding was the funding of the entire outstanding warrant indebtedness of the county, as it had to be under the law, and when these warrants were given up and bonds given in their place, they were cancelled and destroyed, and it is impossible to follow each numbered warrant that went into these funding bonds; there were \$500,000 of these warrants funded."

Thirty-second. The court and judge erred in excluding the evidence offered by plaintiff and his attorneys on page 369 of the bill of exceptions, as follows:

"Then, that we may get the benefit of the ruling of the court, I desire to prove by the records of the decisions in the Lake County case against Rollins, and Lake County vs. Graham and by other recorded evidence of this and other courts, and by the records of Lake county, that the indebtedness summed up as outstanding indebtedness of Lake county, in county warrants, July 1st, 1880, on page 2 of the book entitled 'County Clerk's Account Book,' a transcript from which has been admitted in evidence, has all been adjudicated and held to be void by the courts, and that as a matter of fact, it was illegal and void at the time it was issued."

The discussion of counsel and court relative to said offer appears on pages 369 and 370 of the bill of exceptions.

Thirty-third. The court and judge erred in excluding the evidence offered by plaintiff and his counsel, contained in Exhibit 32, on pages 373 to 387 inclusive of the bill of exceptions, the offer of the same in evidence being as follows: (Bill of exceptions pages 371 and 372.)

Mr. JOHNSON: As Mr. Parks has now procured the order (Exhibit 32) he referred to, we will offer this copy of the order of the board of county commissioners of Lake county.

Mr. PARKS: I will go on the stand and testify that I drew and prepared the original order and had it passed by the board, and that this is a copy of the original. It is an order of the board of county commissioners made on the 18th day of October, 1886, as a result of taking an account of the outstanding indebtedness, in which they recognized and ordered to be paid, the legal portion of the debt outstanding, including this indebtedness, and directing the treasurer not to pay the invalid part. This record shows the indebtedness as they ascertained it to amount to \$24,815.90; by including the valid warrant indebtedness they, by necessary implication, excluded the payment of all other indebtedness, much of which is included in this evidence offered by defendant in the offer of warrant registry, clerk's account, etc.

The COURT: The objection is sustained, let it be filed as an exhibit in the case.

Said Exhibit 32 shows the number, date, amount, to whom issued, and whether funded in judgment or outstanding of the valid war-ant



indebtedness of the county of Lake, incurred from the organization of the defendant county to the 2nd day of May, 1881, enumerates such indebtedness, and shows the amount of the same outstanding and unpaid to be about \$24,815.90.

145 Of all the county warrants enumerated in Exhibit Ten (10) of the bill of exceptions, the evidence of which was admitted by the court below to show the outstanding debt of the defendant county when the bonds in suit were issued, viz: July 30th, 1880, the following-described warrants *only* are enumerated and designated in Exhibit No. 32, as valid when the bonds were issued, viz:

Schedule of valid Lake County debts outstanding and unpaid when the court-house bonds were issued, as shown by Exhibit 10 offered by defendant and Exhibit 32 offered by plaintiff.

Page.		Number.	Amount.
1.	1879 Register.....	7 .....	\$100.00
"	.....	9 .....	508.84
"	.....	10 .....	81.33
"	.....	11 .....	153.50
"	.....	13 .....	28.00
"	.....	14 .....	3.00
"	.....	16 .....	100.00
"	.....	17 .....	24.00
"	.....	19 .....	430.90
"	.....	20 .....	100.00
"	.....	21 .....	2.20
"	.....	24 .....	208.50
"	.....	29 .....	2.15
"	.....	30 .....	2.50
"	.....	31 .....	9.00
"	.....	32 .....	105.00
"	.....	34 .....	105.28
"	.....	36 .....	20.25
"	.....	37 .....	71.67
"	.....	38 .....	569.95
2.	.....	45 .....	220.00
"	.....	46 .....	3.00
"	.....	47 .....	3.00
"	.....	48 .....	2.20
"	.....	50 .....	5.00
"	.....	51 .....	10.50
"	.....	53 .....	90.00
"	.....	54 .....	2.25
"	.....	59 .....	82.20
"	.....	60 .....	2.15
"	.....	61 .....	123.21
"	.....	63 .....	770.41
"	.....	64 .....	5.00
"	.....	66 .....	5.00

2.	67	5.00
"	68	5.00
"	69	5.00
"	70	5.00
"	71	5.00
"	73	5.00
"	75	30.00
"	82	5.00
"	85	5.00
3.	91	5.00
"	94	5.00
"	100	5.00
"	102	9.50
"	103	29.15
"	104	692.00
"	108	93.75
"	110	5.70

Forward... .. \$4,864.19

Page.	Number.	Amount.
	Amount forwarded..	\$4,864.19
3.	1879 Register..... 113	6.60
"	..... 114	2.00
"	..... 115	2.00
"	..... 116	335.15
"	..... 126	397.00
"	..... 127	30.00
"	..... 129	6.60
4.	..... 131	100.00
"	..... 133	25.00
"	..... 134	14.25
"	..... 135	90.82
"	..... 136	157.29
"	..... 137	100.00
"	..... 140	50.00
"	..... 141	206.38
"	..... 142	299.00
"	..... 143	31.50
"	..... 144	25.00
"	..... 145	150.00
"	..... 146	42.00
"	..... 147	11.50
"	..... 149	27.50
"	..... 150	1.20
"	..... 152	68.65
"	..... 155	108.00

147

4.	.....	156	.....	2.50
"	.....	157	.....	37.50
"	.....	158	.....	35.00
"	.....	159	.....	25.00
"	.....	160	.....	2.50
"	.....	161	.....	100.00
"	.....	163	.....	2.20
"	.....	164	.....	42.00
"	.....	165	.....	338.84
31.	1880 Register	1273	.....	470.00
"	.....	1274	.....	11.00
38.	.....	1582-6	.....	255.00
"	.....	1589	.....	25.00
"	.....	1590	.....	5.43
"	.....	1594	.....	2.20
"	.....	1595	.....	207.20
"	.....	1598	.....	8.00
"	.....	1599	.....	2.40
"	.....	1601	.....	2.50
"	.....	1602	.....	2.50
"	.....	1603	.....	2.00
"	.....	1605	.....	283.90
"	.....	1607	.....	130.50
"	.....	1609	.....	12.60
"	.....	1610	.....	1.90
"	.....	1612	.....	257.25
"	.....	1613	.....	270.75
"	.....	1614	.....	143.60

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 Forward..... \$9,730.90

Page.	Number.	Amount.
	Amount forwarded..	\$9,730.90
38.	..... 1616	50.00
"	..... 1617	19.25
39.	..... 1618	62.15
"	..... 1619	18.60
"	..... 1620	6.75
"	..... 1621	194.25
"	..... 1624	30.00
"	..... 1625	5.00
"	..... 1626	2.15
"	..... 1627	5.00
"	..... 1628	32.00
"	..... 1629	1,554.52
40.	..... 1666	5.00
"	..... 1678	89.80

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40.	1682	26.32
41.	1726	45.00
44.	1839	23.80
45.	1880	2.60
"	1885	56.78
"	1894	616.04
"	1897	10.00
"	1898	60.00
"	1900	81.25
"	1901	45.00
"	1902	45.00
"	1905	10.00
"	1906	28.45
"	1907	210.00
"	1908	349.40
"	1909	387.00
"	1911	20.00
"	1912	35.00
"	1913	30.00
"	1914	30.00
"	1915	42.50
"	1916	60.00
51.	2160	34.30
54.	2272	35.00
"	2273	8.20
"	2274	177.00
"	2275	.98
"	2277	20.00
62.	2531	29.00
"	2540	10.50
68.	2804	57.40
79.	3251	50.00
"	3252	5.00
"	3253	15.00
"	3255	2.20
"	3256	27.58

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 \$14,492.67

Assessed valuation of defendant county of A. D. 1880, \$11,126,489, bill of exceptions page 47. Debt limit when bonds were issued \$66,758.93 (defendant's answer alleged and admits such limit). Valid debt in Exhibit 10, as shown by Exhibit No. 32, \$14,492.67. Amount of bonds involved in this action \$50,000, as shown by the bond registry, Exhibit 31.

Amount of bonds (Exhibit 31) and valid debt (Exhibit 32), \$64,492.67, when bonds were issued July 31st, 1880. Excess of debt limit over bonds and valid outstanding debt when the bonds were issued, \$2,266.26.

Thirty-fourth. The court and judge erred in overruling the plaintiff's offer of evidence contained on page 388 of the bill of exceptions as follows :

Mr. JOHNSON : I think we might offer, I think enough appears by the opinions, the two decisions of the court. I offer the opinions of the supreme court in the Graham and Rollins cases.

Thirty-fifth. The court and judge erred in excluding the evidence offered by the plaintiff as shown on page 391 of the bill of exceptions, which offer contemplated evidence showing that the warrants issued subsequent to January 1st, 1880, in suit were funded in the funding bonds of said defendant county issued January 1st, 1882.

The circuit court of the United States and the judge of said court, Hon. John A. Riner, presiding, further erred signally on and in the said trial of said cause before the court and jury, against the rights of the plaintiff therein and thereat, and in this, to wit :

Thirty-sixth. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the first instruction, on page 393 of the bill of exceptions, in the words and figures following :

"The jury are instructed that the amendment to article eleven, section six, of the constitution of the State of Colorado, adopted November 6, 1888, operates to validate the bonds and coupons the validity of which is involved in this action, even though they may have been originally issued in excess of the valuation prescribed by the constitution or the statutes of Colorado."

Thirty-seventh. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the second instruction, on page 393 of the bill of exceptions, in the words and figures following :

"The court instructs the jury that the plaintiff in this cause, Harry H. Dudley, being a non-resident of the State of Colorado and a resident of the State of New Hampshire, as appears by the evidence in this case, had the legal right to purchase the bonds and coupons in question for the purpose of enforcing the same by this action, and such purchase as shown by the evidence in this case is lawful and valid and operated to transfer the legal title of said bonds and coupons to him."

150 Thirty-eighth. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the third instruction, on page 394 of said bill of exceptions, in the words and figures following :

"The court instructs the jury that the sale of the bonds and coupons in question involved in this suit, to Mr. Edward W. Rollins, about the time the bonds were issued, as testified to by him and undisputed in this case, for a valuable consideration, made him a *bona fide* purchaser thereof for value and without notice of any claimed defect or invalidity of said bonds and coupons, and the *bona fides* of such purchase by him for value without notice characterizes the said bonds and coupons so purchased and renders all subsequent purchasers thereof *bona fide* purchasers."

Thirty-ninth. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the fourth instruction, on page 394 of said bill of exceptions, in the words and figures following:

"The jury are instructed that in determining whether the constitutional or statutory limitation was exceeded by the issuance of said bonds, they will take into consideration the assessed valuation of 1880, in force at the time the bonds were issued, and not that of 1879, in force at the time of the vote of the people."

Thirty-ninth. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the fifth instruction, on page 395 of said bill of exceptions, in the words and figures following:

"The jury are instructed that the validity of an obligation issued by a county, in so far as it is affected by the limitation of indebtedness, depends upon the state of the valid indebtedness outstanding at the time the valid obligation is issued, and if the jury believes from the evidence that the valid and outstanding indebtedness of defendant, at the time of the issuance of the bonds in question, and including said bonds, did not exceed the limit prescribed by the constitution or the statute, then they will find a verdict for the plaintiff."

Fortieth. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the sixth instruction, on page 395 of said bill of exceptions, in the words and figures following:

"The jury are instructed that the burden of proof to show that the valid outstanding indebtedness of defendant, at the  
151 time the bonds were issued, was such that, by the issuance of the bonds, the limitation of indebtedness prescribed by the constitution or the statutes of Colorado was exceeded, rests upon defendant."

Forty-first. The court and judge erred in refusing to instruct the jury as requested by the plaintiff in error in and by the seventh instruction, on page 396 of the bill of exceptions, in the words and figures following:

"The jury are instructed that under the constitution as it stood at the time the bonds in question were issued, the people of a county having an assessed valuation of more than five millions could authorize the contraction of a debt amounting to six dollars on each thousand dollars of valuation, and that the validity of the debt thus contracted could not be affected by any outstanding indebtedness of such county."

Forty-second. The court and judge erred in instructing the jury to return a verdict in favor of the defendant, and in receiving and recording the same in said court, which verdict was and is in the words and figures following, on page 396 of the bill of exceptions, to wit:

In the Circuit Court of the United States for the District of Colorado.

HARRY H. DUDLEY

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE.

We, the jury in the above entitled cause, find the issues herein joined for the defendant.

(Signed)

C. H. McLAUGHLIN, *Foreman.*

Forty-third. The court and judge erred in entering judgment upon said verdict in favor of the defendant and against the plaintiff, as shown on page 396 of the bill of exceptions.

Forty-fourth. The court and judge erred in overruling the motion of the plaintiff made and filed in said cause to set aside the verdict of the jury rendered upon the trial of said cause, and the judgment entered thereon in favor of the defendant in said cause and grant a new trial therein to the said plaintiff upon the merits of said cause, upon the grounds stated in said motion, said motion being contained on pages 397 and 398 of the bill of exceptions. The action of the court in overruling said motion being recorded on page 389 of said bill of exceptions.

152 Forty-fifth. The court and judge erred in admitting improper evidence on the trial of said cause against the objection of the plaintiff and in favor of the defendant.

Forty-sixth. The court and judge erred in rendering judgment in favor of the defendant and against the plaintiff, as said judgment is against the law of the land.

And the said plaintiff in error, Harry H. Dudley, prays that the judgment aforesaid given and rendered under the circumstances and in the manner aforesaid, may be reversed and annulled and altogether for naught held, and that the said plaintiff in error may be restored to all things which he has lost by occasion of the said judgment.

H. B. JOHNSON &  
DAN'L E. PARKS,

*Attorney for Plaintiff in Error.*

Indorsed : No. 2758. In the United States circuit court of appeals. Harry H. Dudley vs. The Board of County Commissioners of the County of Lake, Colorado. Assignment of errors. Filed June 8, 1896. Robert Bailey, clerk. Dan'l E. Parks, att'y for pl'ff in error, Denver, Colo.



*Petition for Writ of Error and Citation in Error.*

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

*vs.*

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE,  
Colorado, Defendant in Error. }

To the honorable the United States circuit court of appeals of the eighth judicial circuit, sitting at the city of St. Louis, in the State of Missouri, U. S. A., and the judges thereof:

The petition of Harry H. Dudley, a citizen of the State of New Hampshire, the above-named plaintiff in error, respectfully shows to this court:

First. That on the 7th day of January, A. D. 1896, on a trial in the circuit court of the United States for the district of Colorado of this cause below, judgment was erroneously entered therein against him, the said plaintiff in error, and in favor of the defendant in error for costs of suit.

Second. That signal errors intervened in said cause on said trial, prejudicial to the said plaintiff in error and advantageous to  
153 the said defendant in error, by reason of which said errors said judgment below against said plaintiff in error and in favor of the said defendant in error, was rendered and is now had, which judgment remains of record in the court below, unreversed and in full force and effect.

Third. That such errors consist of the erroneous rulings of the court below upon the law of the case, the admissibility of evidence on the trial of said cause below, against the objection of the plaintiff in error, of instructions to the jury which tried the case, etc., in rendering final judgment against the said defendant, and refusing a new trial in said court below.

Fourth. That exceptions to the said decision and rulings of the court below on the trial of said cause below were, and have been, duly, and in due time, form and manner, preserved in the record of this cause below, by bill of exceptions, duly made, tendered and signed, by the judge presiding on the trial in said cause below, on the application of the said plaintiff in error.

Fifth. That said plaintiff in error has in due time, form and manner assigned errors upon the record below, in this court, by assignment of errors, duly made and signed by his counsel and filed herein setting forth the errors relied on herein to reverse said judgment below.

In consideration of the premises, the said plaintiff in error now comes, and prays that a writ of error may, in due time, form and manner, be issued in this cause to the said court below, commanding it and the judges thereof, to transmit to this court, in due time, form and manner, the record of this cause in said court below, and of the

said proceedings and judgment therein, for the consideration and judgment of this court; said writ of error to be issued and made returnable in accordance with the rules and practice of this court; and that a citation in error in this cause, may also, in accordance with the rules and practice of this court, and in due time, form and manner, be issued out of this court, directed to the said defendant in error, and requiring the said defendant in error to be and appear in this cause and court on a certain day, to be therein mentioned, to show cause why the said judgment, so as aforesaid rendered  
 154 against the said plaintiff in error, should not be corrected, and why speedy justice should not be done to your petitioner in that behalf.

And your petitioner will ever pray, &c.

Dated this 5th day of June, A. D. 1896.

HARRY H. DUDLEY,  
*Plaintiff in Error,*  
 By DAN'L E. PARKS,  
*Attorney for Plaintiff in Error.*

Indorsed: No. 2758. U. S. circuit court of appeals of the eighth judicial circuit. Harry H. Dudley vs. The Board of County Commissioners of the County of Lake, Colorado. Petition for writ of error and citation in error. Filed June 8, 1896. Robert Bailey, clerk. Dan'l E. Parks, att'y for pl'ff in error, Denver, Colo.

UNITED STATES OF AMERICA, }  
*District of Colorado,* } ss:

In the Circuit Court of the United States for the District of Colorado.

HARRY H. DUDLEY, Plaintiff in Error,  
*vs.*  
 THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY }  
 of Lake, Defendant in Error. } No. 2758.

The clerk will please make a transcript in error in the above-entitled cause, and of the following proceedings therein, viz:

Summons, and proof of service, complaint, answer, second replication, filed December 2nd, 1893, journal entries on trial and judgment, motion for a new trial and overruling of same, bill of exceptions, bond in error and assignment of errors.

Dated June 10th, 1896.

Yours, &c.,

DAN'L E. PARKS,  
*Attorney for Plaintiff in Error.*

Indorsed: No. 2758. In the circuit court of the U. S., district of Colo. Harry H. Dudley vs. The Board of County Commissioners of the County of Lake. Præcipe for transcript on writ of error. Filed Jun- 13, 1896. Robert Bailey, clerk.

THE UNITED STATES OF AMERICA, }  
*District of Colorado.*

Know all men by these presents, that we, Harry H. Dudley, of Concord, New Hampshire, as principal, and — — — are held and firmly bound unto The Board of County Commissioners of the County of Lake, State of Colorado, as *sureties* in the full and just sum of five hundred (\$500) dollars, to be paid to the said The Board of County Commissioners of the County of Lake, its successors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of June in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at the November term, A. D. 1895, of the circuit court of the United States, for the district of Colorado, in a suit pending in said court between Harry H. Dudley plaintiff, and The Board of County Commissioners of the County of Lake, defendant, judgment was rendered against the said Harry H. Dudley for costs of suit and the said Harry H. Dudley, having obtained a writ of error to the United States circuit court of appeals for the eighth circuit to reverse the judgment of the said circuit court and a citation directed to the said The Board of County Commissioners of the County of Lake citing and admonishing said board to be and appear in the United States circuit court of appeals, for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Harry H. Dudley plaintiff shall prosecute said writ of error to effect, and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

HARRY H. DUDLEY. [SEAL.]  
 EDWARD W. ROLLINS. [SEAL.]  
 JOHN H. POOLE. [SEAL.]

Sealed and delivered in presence of—  
 F. W. ROLLINS.

Approved :  
 JOHN A. RINER, *Judge.*

*Justification.*

THE UNITED STATES OF AMERICA, } ss :  
*District of Colorado,*

John H. Poole surety on the within bond, being first duly sworn, deposes and saith that he is worth in both or either real or personal property in Colorado the sum below set opposite his name, that is to say: the sum of five hundred (500) dollars, over and above all

his just debts and liabilities, and in property subject to levy and sale upon execution.

JOHN H. POOLE. \$500.00.

156 Subscribed and sworn to before me, at Denver, this 8th day of June, A. D. 1896.

[SEAL.]

ALBERT E. GRIER,  
Notary Public.

Indorsed: Gen. No. 2758. Circuit court of the United States, district of Colorado. Harry H. Dudley vs. The Board of County Commissioners of the County of Lake, Colorado. Bond, \$500.00. Filed this 10th day of June, A. D. 1896. Robert Bailey, clerk.

*Writ of Error to United States Circuit Court of Appeals, Eighth Circuit.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:  
District of Colorado,

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Colorado, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1895, thereof, between Harry H. Dudley, plaintiff, and The Board of County Commissioners of the County of Lake (Colorado), a manifest error hath happened, to the great damage of the said Harry H. Dudley, plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the seventh day of July, 1896, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further  
157 to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 10th day of June, in the year of our Lord, one thousand eight hundred and ninety-six, and

Seal United States Circuit  
Court, District of Colo-  
rado.

of the Independence of the United States  
the 120th year. Issued, at office in Den-  
ver, in said district, with the seal of the  
circuit court of the United States, for the  
district of Colorado, and dated as aforesaid.

ROBERT BAILEY,

*Clerk Circuit Court United States, District of Colorado.*

Allowed by—

JOHN A. RINER, *Judge.*

*Return.*

THE UNITED STATES OF AMERICA, }  
*District of Colorado,* } ss:

In obedience to the command of the within writ, I herewith trans-  
mit to the honorable, the United States circuit court of appeals a  
duly certified transcript of the record and proceedings in the within-  
entitled case, together with all things concerning the same.

Seal United States Circuit  
Court, District of Colo-  
rado.

In witness whereof, I hereto subscribe  
my name, and affix the seal of said cir-  
cuit court of the United States for the  
district of Colorado, at Denver, in said  
district, this 22nd day of June, 1896.

ROBERT BAILEY, *Clerk,*

By CHARLES W. BISHOP,

*Deputy Clerk.*

Gen. No. 2758. United States circuit court of appeals, eighth  
circuit. Harry H. Dudley, plaintiff in error, vs. The Board of  
County Commissioners of the County of Lake, Colorado, defendant  
in error. Writ of error to circuit court U. S., district of Colo-  
rado. Dan'l E. Parks, attorney for plaintiff in error.

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*Citation.*

United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA, }  
*District of Colorado.* }

The United States of America to the Board of County Commis-  
sioners of the County of Lake (Colorado), defendant in error,  
Greeting:

You are hereby cited and admonished to be and appear in the  
United States circuit court of appeals for the eighth circuit, at the  
city of St. Louis, Missouri, sixty days from and after the day this  
citation bears date, pursuant to a writ of error, filed in the clerk's  
office of the circuit court of the United States, for the district of  
Colorado, sitting at Denver, in said district, wherein Harry H. Dud-  
ley is plaintiff in error, and you are defendant in error, to show

cause if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable John A. Riner, judge of the United States district court for the district of Wyoming, assigned to hold the circuit court of the United States for the district of Colorado, this 10th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN A. RINER,

*Judge of the United States District Court for the District of Wyoming,  
Assigned to Hold the Circuit Court of the United States for the  
District of Colorado.*

*Proof of Service.*

THE UNITED STATES OF AMERICA, }  
District of Colorado, } ss :

On this — day of — A. D. 189—, personally appeared — — before me, the subscriber, clerk of the — court of the United States, for the district of Colorado, and makes oath that he delivered a true copy of the within citation to — —.

We acknowledge service of above citation on the defendant in error, this 10th day of June, 1896.

THOMAS, BRYANT & LEE,  
*Attorneys for Defendant in Error.*

Sworn to and subscribed before me, this — day of — A. D. 189—.

— —, Clerk,  
By — —, Deputy Clerk.

159 Gen. No. 2758. United States circuit court of appeals, eighth circuit. Harry H. Dudley, plaintiff in error, vs. The Board of County Commissioners of the County of Lake, Colorado, defendant in error. Citation. Filed in United States circuit court for the district of Colorado this 10th day of June, A. D. 1896. Robert Bailey, clerk. Dan'l E. Parks, attorney for plaintiff in error.

UNITED STATES OF AMERICA, }  
District of Colorado, } ss :

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one to three hundred and fifty-five both inclusive to be a true, perfect and complete transcript and copy of the complaint, summons, and proof of service, answer, second replication, filed December 2nd, 1893, journal entries on trial and judgment, motion for a new trial and overruling of same, bill of exceptions, bond in error and assignment of errors heretofore filed or had and entered of record in said court, and in a certain cause lately in said

court pending, wherein Harry H. Dudley was plaintiff and The Board of County Commissioners of the County of Lake was defendant, as fully and completely as the same still remain on file or of record in my office, at Denver.

Seal United States Circuit  
Court, District of Colo-  
rado.

In testimony to the above, I do here-  
unto sign my name and affix the seal of  
said court, at Denver, in said district,  
this twenty-second day of June, A. D.  
1896.

ROBERT BAILEY, *Clerk*,  
By CHARLES W. BISHOP,  
*Deputy Clerk*.

Filed June 29, 1896.

JOHN D. JORDAN, *Clerk*.

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*(Appearance for Plaintiff in Error.)*

And on the sixth day of July, A. D. 1896, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May  
Term, 1896.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Lake, Colorado.	

The clerk will enter *my* appearance as counsel for the plaintiff in error.

DANIEL E. PARKS,  
H. B. JOHNSON,  
*Att'ys for Pl'ff in Error.*

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1896. No. 821. Harry H. Dudley, plaintiff in error, *vs.* Board of County Commissioners of the County of Lake. Appearance. Filed Jul- 6, 1896. John D. Jordan, clerk. Daniel E. Parks, counsel for pl'ff in error.

*(Appearance for Defendant in Error.)*

And on the twenty-seventh day of July, A. D. 1896, an appearance for defendant in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:



United States Circuit Court of Appeals, Eighth Circuit, May  
Term, 1896.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Lake.	

The clerk will enter *my* appearance as counsel for the defendant  
in error.

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C. S. THOMAS.  
W. H. BRYANT.  
H. H. LEE.

Endorsed: U. S. circuit court of appeals, eighth circuit, May  
term, 1896. No. 821. Harry H. Dudley, plaintiff in error, *vs* Board  
of County Commissioners of the County of Lake. Appearance.  
Filed Jul- 27, 1896. John D. Jordan, clerk. C. S. Thomas, W. H.  
Bryant, H. H. Lee, counsel for def't in error.

*(Appearance for Plaintiff in Error.)*

And on the eighteenth day of September, A. D. 1896, an appear-  
ance of counsel for plaintiff in error was filed in the clerk's office of  
said circuit court of appeals in said cause in the words and figures  
following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May  
Term, 1896.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Lake, Colorado.	

The clerk will enter my appearance as counsel for the plaintiff  
in error.

J. E. McKEIGHAN.

Endorsed: U. S. circuit court of appeals, eighth circuit, May  
term, 1896. No. 821. Harry H. Dudley, plaintiff in error, *vs* Board  
of County Commissioners of Lake Co. Appearance. Filed Sep. 18,  
1896. John D. Jordan, clerk. J. E. McKeighan, counsel for pl'ff in  
error.

*(Appearance for Plaintiff in Error.)*

And on the second day of February, A. D. 1897, an appearance  
of counsel for plaintiff in error was filed in the clerk's office of said  
circuit court of appeals in said cause in the words and figures fol-  
lowing:

162 United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

HARRY H. DUDLEY, Plaintiff in Error,	}	No. 821.
<i>vs.</i>		
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Lake, Colorado.		

The clerk will enter my appearance as counsel for the plaintiff in error.

E. F. RICHARDSON.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 821. Harry H. Dudley, pl'ff in error, *vs.* The Board of County Commissioners of the County of Lake, Colorado. Appearance. Filed Feb. 2, 1897. John D. Jordan, clerk. E. F. Richardson, counsel for pl'ff in error.

*(Appearance for Plaintiff in Error.)*

And on the fourth day of February, A. D. 1897, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

HARRY H. DUDLEY, Plaintiff in Error,	}	No. 821.
<i>vs.</i>		
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Lake, Colorado.		

The clerk will enter my appearance as counsel for the plaintiff in error.

H. B. JOHNSON.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 821. Harry H. Dudley, pl'ff in error, *vs.* The Board of County Commissioners of the County of Lake, Colorado. Appearance. Filed Feb. 4, 1897. John D. Jordan, clerk. H. B. Johnson, counsel for pl'ff in error.

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*(Appearance for Defendant in Error.)*

And on the fourth day of February, A. D. 1897, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Lake, Colorado.	

The clerk will enter my appearance as counsel for the defendant in error.

GEORGE R. ELDER.

Endorsed : U. S. circuit court of appeals, eighth circuit, December term, 1896. No. 821. Harry H. Dudley, plaintiff in error, *vs.* The Board of County Commissioners of the County of Lake, Colorado. Appearance. Filed Feb. 4, 1897. John D. Jordan, clerk. George R. Elder, counsel for def't in error.

*(Argument Commenced.)*

And on the fourth day of February, A. D. 1897, in the record of proceedings of said circuit court of appeals is an entry in said cause in the words and figures following :

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

THURSDAY, February 4, 1897.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Lake, Colorado, Defendant in Error.	

In error to the circuit court of the United States for the district of Colorado.

164 This cause having been passed and called for hearing this day, argument was commenced by Mr. E. F. Richardson in behalf of the plaintiff in error, continued by Mr. George R. Elder and Mr. C. S. Thomas for the defendant in error, but not being concluded at the hour of adjournment further argument was postponed until tomorrow morning.

*(Submission.)*

And on the fifth day of February, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following :

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

FRIDAY, February 5, 1897.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Lake, Colorado, Defendant in Error.	

In error to the circuit court of the United States for the district of Colorado.

This cause having been called this day for further hearing, argument was continued by Mr. C. S. Thomas in behalf of the defendant in error and concluded by Mr. H. B. Johnson for the plaintiff in error. Thereupon the cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the twelfth day of April, A. D. 1897, an opinion of said United States circuit court of appeals was filed in said cause in the words and figures following:

165 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1896.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821. In Error to
<i>vs.</i>	
THE BOARD OF COUNTY COMMISSIONERS OF the County of Lake, Colorado, Defendant in Error.	

the Circuit Court of  
the United States for  
the District of Colo-  
rado.

Mr. H. B. Johnson and Mr. E. F. Richardson (Mr. Daniel E. Parks was with them on the brief) for the plaintiff in error.

Mr. George R. Elder (Mr. C. S. Thomas, Mr. W. H. Bryant and Mr. H. H. Lee were with him on the brief) for defendant in error.

Before Sanborn and Thayer, circuit judges, and Lochren, district judge.

*Statement.*

This action was brought to recover the amount of a large number of coupons, aggregating \$26,500 exclusive of interest, which had formed part of and been attached to bonds of said county of Lake, in the State of Colorado, which had been issued to the amount of \$50,000, on or after September 6, 1880, but bearing date July 31, 1880, for the purpose of erecting necessary public buildings for said county. Said bonds bore interest at the rate of ten per cent. per annum, payable annually on the first day of April of each year, at the office of the county treasurer of said county, upon delivery of

the attached interest coupons. The bonds were redeemable at the pleasure of the county after ten years, and were due and payable at the office of the county treasurer twenty years from the date thereof.

The coupons maturing upon these bonds before April 1, 1884, were all paid as they matured, at the office of said county treasurer, but no coupons maturing at or after that date have been paid, the coupons sued on being among those unpaid.

The answer of the defendant denied knowledge or information sufficient to form a belief as to whether plaintiff was the owner and holder of any of the coupons, or had become the purchaser of them for a valuable consideration, without notice of any claim affecting their validity.

166 But the principal defense, variously stated in the answer, was, in substance, that under the constitution and laws of the State of Colorado, the Board of County Commissioners of said County of Lake had not, when they issued said bonds, any power or lawful authority to issue the same, for the alleged reason that by the issue of such bonds a debt of said county was contracted, or the prior debt of said county increased, to an amount prohibited by the constitution of said State, and that from the existing facts and circumstances shown by the records of said county, all purchasers of said bonds were bound to take notice of their invalidity.

Section 6 of article XI of the constitution of Colorado, as it stood prior to the year 1888, was as follows:

"No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: Counties in which the assessed valuation of taxable property shall exceed five millions of dollars, \$1.50 on each thousand thereof; counties in which such valuation shall be less than five millions of dollars, \$3.00 on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not exceed twice the rate upon the valuation last herein mentioned: Provided, that this section shall not apply to counties having a valuation of less than one million of dollars."

The said bonds contained a recital upon the face of each bond, as follows:

"This bond is one of a series of fifty thousand dollars, which the board of county commissioners of said county have issued for the

purpose of erecting necessary public buildings, by virtue of and in compliance with a vote of a majority of the qualified voters of said county, at an election duly held on the 7th day of October, A. D. 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled 'An act concerning counties, county officers and county governments, and repealing laws on those subjects,' approved March 24th, A. D. 1877, and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond."

Secs. 20 to 25 inclusive of said act were also printed upon said bonds, and contained all the provisions of said act, relative to the action of the board of county commissioners in determining upon the necessity of creating an indebtedness for the purpose of erecting necessary public buildings, making or repairing roads and bridges, and by order specifying the amount required, and submitting the question of incurring the debt to a vote of the qualified electors at a general election, by posting of notices; also prescribing the form of ballots and manner of voting and canvassing the vote, and the authority of the county commissioners in case the vote should be carried to contract the indebtedness, and the limitations upon such authority, and the form and purport of the bonds to be issued, and provision to be made for the payment of the interest and principal of the bonds, and a provision that they should not be sold at a discount of more than fifteen per cent. of their par value.

Sec. 21 of said act contained a provision, as follows: "Provided, that the aggregate amount of indebtedness of any county exclusive of debts contracted prior to July first, 1876, in which the assessed valuation of property shall exceed one million of dollars, for all purposes, shall not be in excess of the following ratio, to wit: Counties in which the assessed valuation of property shall exceed five million of dollars, \$6.00 on each thousand dollars thereof; counties in which the assessed valuation of property shall be less than five millions, and exceed one million of dollars, \$12.00 on each thousand dollars thereof."

The action of the board of county commissioners preliminary to and in submitting to vote of the qualified electors of said county, at the general election held October 7, 1879, the question of creating an indebtedness of \$50,000, for the purpose of erecting necessary public buildings, and \$5,000, for the building and construction of public roads and bridges, was strictly in conformity with said act. The election was duly held, and the vote on that question duly had and canvassed and found and declared to be carried. And all the acts and doings were properly recorded, and the bonds prepared, executed and issued in strict accordance with the provisions of said act. And the bonds were sold for ninety-five cents on the dollar of their par value, and have, since within one year of their issue, been held and owned by purchasers for full value without actual notice of any illegality or infirmity in said bonds. The plaintiff is the holder of the coupons sued upon, by delivery of the same with prop-

erly executed written assignments thereof to him, by the former owners of such coupons, but without payment by him of any money therefor.

The assessed valuation of taxable property in said county of Lake for the year 1879 was \$3,485,628, and for the year 1880 was \$11,124,489, and such assessment was completed on the first day of September in each of said years, by the action of the board of equalization.

Sec. 30 of the act above referred to made it the duty of the board of county commissioners of each county to make out semi-annual statements at the regular sessions in January and July, and publish them in some weekly newspaper published in the county, or if no such newspaper be so published, to cause such statements to be posted in three conspicuous places in the county, one being the court-house door, showing the amount of debt owing by the county, in what it consists, what payments have been made thereon, the rate of interest, and a detailed account of receipts and expenditures for the preceding months, and striking a balance showing the deficit or the balance in the treasury. "And the statement thus made, in addition to being published as before specified, shall also be entered of record by the clerk of the board of county commissioners, in a book to be kept by him for that purpose only, which book shall be kept open to the inspection of the public at all times."

There was no evidence in the case that any such semi-annual statement made by the Board of County Commissioners for said County of Lake at the January or July sessions of said board in the year 1880, had ever been entered of record in any book kept for that purpose only, as required by said act. The fair inference from the testimony is that no such record was ever made.

Upon the trial, the defendant to prove its allegation that on July 31, 1880, the date of said bonds, and also at the time they were issued, the aggregate outstanding indebtedness of said county of Lake was largely in excess of the amount of the extreme limitation fixed by the constitution of said State, and the act aforesaid, offered in evidence a book kept in the years 1880 and 1881 by the county clerk of said Lake county, called the "County Clerk's Account Book," and purporting to contain, among other things, detailed statements of the financial condition of said county on January 1, 1880, July 1, 1880, and January 1, 1881, and the same was admitted in evidence by the court, over the objection and exception of plaintiff, that it was not the record provided for by said act, nor the semi-annual statement of the board required by said act. Much other evidence tending to show the existence of outstanding warrants and indebtedness of said county at the time of issuing said bonds, to an amount largely in excess of the aggregate amount of indebtedness which the county could, under said constitutional limitations, lawfully incur, was offered by defendant, and admitted by the court, over the objections of the plaintiff that the same was incompetent and immaterial.

At the conclusion of the evidence, the court refused all of the plaintiff's requests for instructions to the jury, and instructed the



jury to return a verdict for the defendant; to which refusal and instruction exceptions were duly taken by the plaintiff. The jury accordingly found for the defendant, and judgment for the defendant was entered upon the verdict.

LOCHREN, J., after stating the case as above, delivered the opinion of the court:

1. The plaintiff by the delivery to him of the coupons and written assignments thereof, became the legal owner of such coupons, and entitled to maintain an action upon them, whether he had actually paid the former owners any consideration for them or not. Holding them by valid written transfers from former *bona fide* holders for value, he succeeded to all rights of such former holders. No defense is pleaded which makes it material whether the plaintiff, under such circumstances, did or did not pay value for the coupons. *Sheridan v. Mayer*, 68 N. Y., 30; *Commissioners v. Bolles*, 94 U. S., 104, 109. The instruction to the jury asked for in plaintiff's second request was correct, and the refusal of the court to give such instruction was error.

2. A county is an organized political subdivision of the State. It has such power, and such only, to contract loans and incur other forms of indebtedness as is expressly or by fair implication granted to it by the legislature of the State, which has plenary authority over that subject, as it has over all ordinary subjects of legislation, except in so far as its authority is taken away, curtailed or restricted by the controlling force and effect of the provisions of the State constitution.

Sec. 6 of article XI of the constitution of Colorado is wholly restrictive in its effect and operation, and does not by its terms authorize any county to incur any form of indebtedness for any purpose. It forbids the contracting of a debt of a specified kind, except for specified purposes, and within specified limits, and forbids the contracting of indebtedness of any and all kinds beyond specified limits, and then prescribes an enlarged limit as to indebtedness, after a county shall have been authorized by vote of the qualified electors, in the manner indicated, with a provision in respect to bonds, if any be issued. But it does not by its own terms grant to any county the power to incur indebtedness, even within the specified restrictions. The authority to grant such power, within such restrictions, therefore, necessarily remains in the legislature, which might in its discretion, prescribe further limitations and restrictions, and provide in detail in respect to the manner in which the power should be executed, and in respect to what acts should be done, and what record made in the execution of such power, and as to the effect of such acts and records.

The bonds in question in this case were issued under the provisions of the act of March 24, 1877, which is expressly referred to in the recital in the bonds, and six sections of which were printed upon the bonds. This act by its terms commits to the board of county commissioners the power to determine the necessity of creating an indebtedness for the erection of public buildings, and of submitting

the question to a vote of the qualified electors at a general election, and of issuing the bonds, if the vote is favorable, keeping within the limitation contained in sec. 21, in respect to the aggregate indebtedness of the county at the time of issuing the bonds. The granting of these powers necessarily intrusts to the board of county commissioner the power and duty of determining whether the proposition to create the indebtedness was carried at the election, and the ascertainment of the fact that the aggregate amount of all forms of the county indebtedness was within such amount, that it would not, by the issue of the bonds, be made to overpass the prescribed limitation. Hence, except for the provision contained in sec. 30 of the same act, requiring the board to make and publish the semi-annual statements of the indebtedness and financial condition of the county, and requiring the clerk of the board to record such statements in a book to be kept for that purpose only, and to be open to public inspection, the recitals in the bonds above quoted, would be conclusive and would estop the county in a suit by a *bona fide* holder of the bonds or coupons. *Knox v. Aspinwall*, 21 How., 589; *Columbia v. Evans*, 92 U. S., 484; *County of Clay v. Society*, 104 U. S., 579; *Commissioners v. Bolles*, 94 U. S., 104; *Evansville v. Dennett*, 161 U. S., 434, 446; *Wesson v. Saline Co.*, 73 Fed. Rep., 719; *Chaffee County v. Potter*, 142 U. S., 355.

In *Chaffee County v. Potter*, last cited, where the recital in the bonds contained a certificate that the total amount of the issue did not exceed the limit prescribed by the constitution of Colorado, and had been duly authorized by a vote of the qualified electors of the county of Chaffee, at the general election named, it was held that the county was estopped to dispute these recitals in an action upon coupons by an innocent holder for value.

The case of *Sutliff v. Lake County*, 147 U. S., 230, deserves special attention, as the bridge bonds, coupons from which were sued upon in that case, were issued under the same act, and upon the authority of the same vote of the qualified electors, as were the public building bonds which are under consideration in this case. In the *Sutliff* case it was held, that as sec. 30 of the same act under which the bonds were issued, made it the duty of the board of county commissioners to make out and publish semi-annual statements, showing the indebtedness, if any, of the county, and that such statements should be entered of record by the clerk of the board in a book to be by him kept for that purpose only, and to be open to the inspection of the public, a person about to purchase such bonds was charged with the duty of examining this public record provided for by the very act under which the bonds were issued, and from that, inform himself whether the amount of the issue stated in the bonds increased the aggregate indebtedness of the county beyond the constitutional limit, which was there held to be identical with the like limitation contained in the act, namely, six dollars on the thousand of the assessed valuation, the total assessed valuation of the taxable property in that county being more than five millions, and that because of such public record of such semi-annual statements, the county was not estopped to prove that before such bonds were issued

the indebtedness of the county had passed the constitutional and statutory limit.

The theory of that case is that a purchaser of bonds issued under that act would have constructive notice of what the record of the semi-annual statement provided for by the act, and which it was his duty to examine, would have shown, had he in fact examined such record. The fact that such record actually existed was assumed and not questioned in the Sutliff case. But in this case it is clearly shown that there never were any such semi-annual statements, or record thereof, covering any of the time which could affect the legality of these bonds. As there was no such record in existence as the act required and contemplated, there was no record which a purchaser of these bonds was bound to examine, or which would be constructive notice to him of the aggregate indebtedness of the county when the bonds were issued. Such purchaser was therefore entitled to rely on the recitals in the bonds. And as one of these recitals was a certificate that all the provisions of the act had been fully complied with by the proper officers in the issuing of the bonds, and as a provision of that act limiting the issue of the bonds by the aggregate of all the indebtedness of the county was in effect identical with the constitutional provision on the same subject, the recital was equivalent to a certificate that this provision of the constitution had been complied with, and brings the case within the decision in *Chaffee County v. Potter, supra*.

It has often been held that in the absence of any statutory public record, a county or municipality may be estopped by similar recitals in bonds, from showing that when the bonds were issued there was an aggregate outstanding indebtedness rendering the issue of bonds illegal. *Marcy v. Oswego*, 92 U. S., 637; *Humboldt v. Long*, 171 U. S., 642, 645; *Buchanan v. Litchfield*, 102 U. S., 278, 292; *Sherman v. Simons*, 109 U. S., 735; *Dallas v. McKenzie*, 110 U. S., 686; *Wilson v. Salamanca*, 99 U. S., 499.

The debt created by the bonds in this case was incurred, not at the time the board of commissioners determined that it was necessary, nor when the qualified voters of the county gave authority to incur it, nor at the date of the bonds, they having been antedated, but at the date, later than September 6, 1880, when the bonds were in fact issued and sold. The bonds recite that the whole issue is \$50,000, and this recital was notice to purchasers of the bonds, of the creation of an indebtedness of the county, to that amount. The assessed valuation of the taxable property of the county of Lake, according to the assessment which was completed by equalization on September 1, 1880, was \$11,124,489. The assessed valuation, in view of the vote authorizing the creation of the indebtedness, would admit of a lawful aggregate of indebtedness of that county, to the extent of upwards of \$66,000. So that the recited amount of that issue of bonds was not of itself notice to a purchaser that the lawful aggregate limit of indebtedness had been passed, even if such purchaser was bound to take notice of the assessed valuation of the taxable property of the county, as was held in *Dixon v. Field*, 111 U. S., 83. As said by the court in *Chaffee County v. Potter*, 142 U. S., 355, 363

"The purchaser might even know, indeed it may be admitted that he would be required to know, the assessed valuation of the taxable property of the county, and yet he could not ascertain, by reference to one of the bonds and the assessment-roll, whether the county had exceeded its power, under the constitution, in the premises."

The court therefore erred in overruling the plaintiff's objections to the county clerk's account book, the warrant register, and the proof of publication of financial statements. None of this evidence was material, as none of it constituted constructive notice to a *bona fide* purchaser of the bonds.

3. A question not suggested by the answer in the case remains to be considered. The first part of sec. 6, of article XI, of the constitution of Colorado, above quoted, as applicable to the class of counties having an assessed valuation of taxable property exceeding five millions of dollars, in the absence of any vote of the qualified electors, restricts the amount of debt by loan which the county can be allowed to contract in any one year, to \$1.50 on each thousand of such assessed valuation. It is questioned whether this limitation upon the amount of debt by loan which the county may be allowed to contract in any one year, does not continue, even after authority has been given by vote of the qualified electors, to create an aggregate indebtedness to the extent, it may be, of six dollars on each thousand of such assessed valuation.

The contention that the restriction referred to, respecting the amount of debt by loan which a county may be allowed to contract in any one year, without such vote, continues after the changed condition effected by such vote, appears to rest upon what seems to us to be a misconception of a sentence in the opinion in *Lake County v. Rollins*, 130 U. S., 662, 669. Under the stipulation in that case (page 664), the only question in the case was whether the limitations contained in sec. 6 of article XI aforesaid, were restrictive only

172 of the power of counties to create debts by loan, or restricted further the power to create and incur all forms of indebtedness; it being admitted by the stipulation, that if the general limitations expressed in that section covered all forms of indebtedness, and were not confined to debts by loan exclusively, the defendant in that action was entitled to judgment. Mr. Justice Lamar pointed out that the first clause of the section, down to where the subject of aggregate indebtedness is considered, speaks only of debts by loan. He then added, "Here the matter of indebtedness by loan is completed, and the section passes to a broader subject." In view of the exact question then under consideration, this language means that at the point of the section indicated, the matter of debt by loan exclusively, is completed, and that thenceforward the section passes to a broader subject, embracing all other forms of indebtedness as well as debt by loan. It is obvious that every sentence of the entire section may enlarge, limit or in some way qualify, the power to contract debts by loan. The provision in respect to submitting the question of incurring indebtedness to the qualified electors, contemplates the submitting of specific propositions, and if the vote is in favor of incurring the debt, the provision that if bonds are issued

they shall run not less than ten years, necessarily provides that such debt when so authorized, may be created by loan.

The case of *The People v. May*, 9 Colo., 80, does not touch the question of how much indebtedness by loan may be contracted by a county in any one year, after authority has been given by a majority vote of the qualified electors to contract the indebtedness. In that case, as in the Rollins case, the sole question considered arose upon the contention that the constitutional restriction contained in said section 6, as to the aggregate amount of county indebtedness, should be regarded only as a limitation of county indebtedness by loan. The court held, as in the Rollins case, that the general limitations as to aggregate indebtedness, embraced all forms of county indebtedness.

The provisions of sec. 6 aforesaid divide themselves into two general clauses, distinct from each other, and each applicable to a condition differing from that to which the other is applicable. The first clause extending down to the preposition "unless," prescribes the restrictions and limitations in respect to the power of contracting indebtedness by counties where there has been no vote of the qualified electors authorizing the creation of specific indebtedness, and not only limits the aggregate amount of indebtedness that can be incurred for all purposes, and in all forms, but also limits the amount of indebtedness by loan that can be created in any one year. The second clause following the preposition "unless," provides for a changed and different condition, in which a county, by vote of a majority of its qualified electors, upon a proposition submitted to them at a general election, has been authorized to create a specific indebtedness. In that case a single and different limitation is prescribed, namely, that that aggregate debt of the county shall not be made to exceed twice the amount limited in the other case, and a provision (contemplating debt by loan) that the bonds, if any be issued therefor, shall not run less than ten years. But there is no limitation in such case, as to the amount of the

173 indebtedness so authorized which can be created in any one year. It would be singular, indeed, if after authorizing a county, upon vote of its qualified electors, to create a specific indebtedness for the erection of necessary public buildings, the same provision should cripple the power to erect such buildings, by requiring that the long-time bonds authorized, should only issue and be sold in small annual installments; making the county wait, perhaps a series of years, before getting enough money to warrant it in beginning the erection of the necessary public buildings, and be paying in the meantime interest on the earlier bonds, the proceeds of which would be lying idle, awaiting the accumulation of enough to begin with. Neither the grammatical construction of the section nor any sound reason justifies the importation into the last clause of the section, of the restriction in the first clause as to the amount of debt by loan which can be created in any one year. It may be added, that the legislative construction of this section of the constitution, as shown by sec. 21 of the act of March 24, 1877, under which these bonds were issued, conforms to the views here expressed,

and that the Supreme Court, in *Sulliff v. Lake County*, 147 U. S., 230, 234, refers to this statute as being, in respect to limitations, in conformity with the constitution.

4. The county of Lake received full consideration for these bonds. Most of them were taken directly by the contractor who erected the public buildings for which they were issued. They passed immediately to *bona fide* holders for full value; the county acknowledged and ratified them, by paying the interest upon them as it matured, for several years. If it were conceded that after the Board of County Commissioners of Lake County had been, by vote of the qualified electors, empowered to create a debt of \$50,000, to erect necessary public buildings, they were required to execute that power by issuing not more than \$16,500 of the \$50,000 in any one year, and they issued the whole \$50,000 at once, instead of issuing the same in yearly installments, the case would not be one of lack of power to issue all the bonds, but a case where the power existed, but was irregularly exercised. In such case, the payment of interest on the bonds for several years, estops the county from asserting such irregularity as a defense. *Supervisors v. Schenck*, 5 Wall., 772; *County of Clay v. Society*, 104 U. S., 579; *Anderson County v. Beal*, 113 U. S., 227; *Moulton v. Evansville*, 25 Fed. Rep., 382; *McKee v. Vernon Co.*, 3 Dillon, 210; *Portsmouth Bank v. Springfield*, 4 Fed. Rep., 276.

The circuit court erred in directing the jury to return a verdict for the defendant. The judgment of the circuit court is accordingly reversed, and the case is remanded for a new trial.

THAYER, J., dissenting :

I am unable to concur in the views expressed by my associates in the foregoing opinion. My disagreement with them arises out of the fact that I am not able to read section 6, article eleven of the constitution of Colorado (quoted in the statement) as they have seen fit to construe it. Without going into the subject at length, it will suffice to say that, in my judgment, the first paragraph of section 6, article eleven of the constitution of Colorado, fixes an absolute limit to the amount of indebtedness created by loan, which a county may contract in any one year, either with or without the sanction  
174 of a popular vote, such limit being \$1.50 per thousand of the assessed valuation of taxable property in counties where such valuation exceeds five million dollars. This was the construction of the constitutional provision in question which seems to have been adopted in *Lake County v. Rollins*, 130 U. S., 662, 669, and in *The People ex rel. v. May*, 9 Col., 80, 86, 87; but in the absence of these adjudications, I should entertain the same view, founded upon the language of the statute and the probable motive of the law-maker. The framers of the Colorado constitution intended, as I think, to impose such restrictions upon counties as would compel them to act prudently, no matter what might be the will of the people, and such restrictions as would prevent them, as far as possible, from exhausting their power to contract debts by overborrowing in a single year. To this end they prohibited counties absolutely from borrowing money, except for one purpose, and limited the amount that migh



be borrowed, even for that purpose, during a single year. Such being my interpretation of the constitutional provision in question, it follows therefrom that the trial court acted properly in directing a verdict for the defendant, because each bond showed on its face that the aggregate debt thereby created in a single year was \$50,000, and because the purchasers of the bonds were bound to take notice of the amount of the assessed valuation, which valuation did not authorize the creation of a debt by loan in a single year, to an amount exceeding \$16,500. *Dixon County v. Field*, 111 U. S., 83; *Hedges v. Dixon County*, 150 U. S., 182; *Lake County v. Graham*, 130 U. S., 674. The plaintiff below was not an innocent purchaser of the bonds in suit, but was affected with knowledge of a want of power in the county to issue the bonds, which rendered the same void. My associates apparently agree with me that the debt evidenced by the bonds in suit was a debt contracted by loan, so that nothing need be said on that point. The judgment being, in my opinion, for the right party, on uncontradicted facts disclosed by the record, I think it should be affirmed.

Filed April 12, 1897.

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(Judgment.)

And on the twelfth day of April, A. D. 1897, in the record of the proceedings of said circuit court of appeals, is an entry of judgment in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1893.

MONDAY, April 12, 1897.

HARRY H. DUDLEY, Plaintiff in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY  
of Lake, Colorado, Defendant in Error.

No. 821.

In error to the circuit court of the United States for the district of Colorado.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Colorado, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that Harry H. Dudley have and recover against The Board of County Commissioners of the County of Lake, Colorado, the sum of three hundred eighteen and  $\frac{1}{10}$  dollars for his costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to grant a new trial.

April 12, 1897.



*(Motion for Order Enlarging Time to File Petition for Rehearing.)*

And on the twenty-eighth day of April, A. D. 1897, a motion for order enlarging time to file petition for rehearing was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

176 In the United States Circuit Court of Appeals for the Eighth Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, Defendants in Error.

Comes now the above-named defendant in error, by its attorneys, and respectfully petitions this honorable court for an order extending the time within which to file a petition for rehearing until the 20th day of May, A. D. 1897; and because of this motion said defendant in error respectfully represents and shows to this honorable court that judgment was rendered in said cause on the 20th day of April, A. D. 1897, and the time within which, under the rules, the petition can be filed, to wit, on or before the end of the term, expires on Saturday, May 1st, A. D. 1897; that the defendant in error has had no opportunity to see the opinion of the court or properly to prepare a petition for rehearing in the cause. For these reasons it respectfully asks this honorable court to grant the extension of time hereinabove referred to.

THOMAS, BRYANT & LEE,

*Attorneys for Defendant in Error.*

Endorsed: No. 821. Harry H. Dudley, pl'ff in error, vs. Board of Commissioners of Lake County. Motion def't in error for order enlarging time to file petition for rehearing. Filed Apr. 28, 1897. John D. Jordan, clerk.

*(Order Enlarging Time to File Petition for Rehearing.)*

And on the twenty-eighth day of April, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order enlarging time to file petition for rehearing in said cause in the words and figures following:

177 United States Circuit Court of Appeals, Eighth Circuit,  
December Term, 1896.

WEDNESDAY, April 28, 1897.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, Defendant in Error.	

In error to the circuit court of the United States for the district of Colorado.

Upon motion of counsel for the defendant in error, it is now here ordered that special leave be granted said defendant in error to file a petition for a rehearing in the above-entitled cause at the May term, A. D. 1897, of said court, on or before the 20th day of May, 1897.

April 28, 1897.

(Signed)

A. M. THAYER,  
*U. S. Circuit Judge.*

*(Stipulation as to Filing Petition for Rehearing.)*

And on the thirty-first day of May, A. D. 1897, a stipulation as to filing petition for rehearing was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the Circuit Court of Appeals for the Eighth Circuit.

HARRY H. DUDLEY, Plaintiff in Error,	}
<i>vs.</i>	
THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, Defendants in Error.	

It is hereby stipulated and agreed by and between the parties to the above-entitled litigation that the petition for rehearing filed by the defendant in error may be filed on or before the 1st day of June, A. D. 1897, and shall be considered as filed within the time specified in the rules of this court, or the time may be extended to the 1st day of June, A. D. 1897.

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DANIEL E. PARKS,  
H. B. JOHNSON,  
E. F. RICHARDSON,  
*Att'ys for Pl't in Error.*  
GEORGE R. ELDER,  
THOMAS, BRYANT & LEE,  
*Att'ys for Def't in Error.*

Endorsed: 821. Circuit court — appeals for the eighth circuit. H. H. Dudley *vs.* Board Co. Commissioners Lake County. Stipulation as to time for filing pet'n for rehearing. Filed May 31, 1897. John D. Jordan, clerk.

*(Petition for Rehearing.)*

And on the thirty-first day of May, A. D. 1897, a petition for a rehearing was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

179 In the United States Circuit Court of Appeals for the Eighth Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, Defendant in Error.

*Petition for Rehearing.*

Comes now the appellee herein and respectfully petitions this honorable court for a rehearing in the above-entitled cause and for a vacation of the judgment rendered therein, and in support of said petition appellee respectfully presents the following points,  
180 facts and authorities in connection with the record and the opinion rendered.

We fear that the court has, in the crowded condition of its docket, failed to give due consideration to some portions of the record and to some of the adjudicated cases cited in our former brief, by reason whereof it reached the conclusion announced in its opinion.

Every good citizen should be anxious to uphold the sanctity of private contracts, and, to instill due respect for their sacredness, should urgently insist upon the enforcement of public contracts. If the people as a whole do not pay their debts, it cannot be expected that individuals will evince much regard for their own obligations. But, on the other hand, no private individual should be required to pay a forged instrument or any other obligation that is not justly and honestly his. And this is equally true of the public. An unlawful contract attempted to be entered into by corrupt and inefficient public officers should not only be cancelled by the courts, but justice should be meted out to the officers thus acting. We do not think that the courts by a forced construction of constitutions and statutes should, in their desire to uphold a public obligation, teach the people that fraud may go unpunished. We think that this court, like every other court, should give a fair, reasonable and just construction to every provision of the constitution and statutes of the State of Colorado, but should not in a zeal to compel the payment of municipal obligations which happen to be held by citizens of other States, cause the people to believe that it is the province of this or any other court to see that every bond or obligation of a municipality, however fraudulent in its execution or unjust in its enforcement, must be paid to the last dollar. We do not think that considerations of this kind have influenced  
181 this court; at the same time, we are conscious of the impression which, since this decision, prevails in this community

that all municipal obligations of counties or cities are susceptible of future enforcement in the Federal courts. The fact that this court was divided in its opinion would show that no such influence controlled the decision in this case; yet we recognize the force of the suggestion, that where a county has issued its bonds for the building of a court-house, and has actually had the court-house built and in its possession, it should be required to pay for the same. While it does not appear in this case from the record that these bonds were issued for the building of a court-house, yet it appears so by inference. As a matter of fact, the building of a court-house by Lake county was in many respects as gross a fraud as was ever perpetrated upon any people. These bonds represent but a fraction of the obligations which dishonest officers through fraudulent contractors attempted to pile up against the county, while the actual cost of construction was less than the amount represented by these bonds. The people of the county have paid almost to their last dollar, and we believe it should be the duty of every court to scrutinize carefully its obligations and only compel it to pay such as not only are clearly just, but are unquestionably authorized by the constitution and statutes.

Imbued with these feelings, we ask the court to consider carefully the points which we desire to make.

# I.

## *Was Dudley a Bona Fide Holder for Value of These Bonds?*

The court says that error was committed in the refusal of  
 182 the court to give the plaintiff's second request. While it may be in a measure immaterial to whom a county pays its debt, if it is a just and valid obligation, we think the court erred in the first point stated in the opinion. On this question we call attention to one comparatively late decision of the Supreme Court of the United States. There a plaintiff brought suit, and the evidence was almost substantially the same as in this case as to his *bona fide* holdings. It appeared that he had been given an assignment of bonds for which there was no consideration. The Supreme Court held, under the circumstances, that it would be presumed that he took them from parties who were not entitled to sue in the Federal courts. We ask the court to consider this case carefully.

*Lytle vs. Lansing*, 147 U. S., 59.

The remarkable circumstances attending Dudley's ostensible purchase of the bonds in suit, his ignorance of their transfer to him for years after the bills of sale were executed, his want of possession both of the bonds and the instruments evidencing their transfer, his parting with absolutely no consideration whatever therefor, his ignorance of the institution of the suit or of its existence until long after it was brought, all these things rob him completely of any presumption of *bona fides*. They do more than this. They clearly indicate that the real owners of these bonds are not and never were *bona fide* holders, and that as a consequence they felt compelled to

make the transfer to Dudley, that they might shield themselves behind his presumptive ignorance of all the facts which invalidated them. They also clearly indicate that Roberts, the contractor, knew and that they were aware of his knowledge of the invalidity of the issue.

183 Besides this, the testimony indisputably establishes the actual ownership of a large proportion of the bonds in suit by citizens of Colorado (testimony of Wright, p. 72 *et seq.*), who transferred them to Dudley only to enable the latter to bring suit in the Federal court. In the face of these facts, is it not apparent that by the decision your honors have announced, all that is necessary to give a Federal court jurisdiction, all that is necessary to constitute a *bona fide* holder in a case like this, is to make a transfer without consideration to a citizen of another State, wholly without his knowledge, and then bring suit in his name, without his knowledge also.

The opinion is inconsistent with the doctrine announced in *Lytle vs. Lansing*, and with the utmost respect we venture to suggest that it cannot stand against the latter either upon principle or authority.

## II.

### *Recitals in the Bond.*

The court, in our judgment, fails to give due effect to the decisions of the Supreme Court concerning the effect of recitals in a bond as against a constitutional provision. While it may be true that were it not for the provisions of the constitution of Colorado, the legislature would have the right to confer plenary power upon counties to contract an indebtedness, the constitution, as a matter of fact, steps in and curtails the power of the legislature, and beyond its limitations, this curtailment amounts to an absolute prohibition. As repeatedly declared by the Supreme Court of the United States, this provision of the constitution is an "express and positive limitation upon the legislative power itself." If this is the interpretation of

the constitution by the Supreme Court, and if the legislature  
184 cannot in any way confer the power to create a debt, we are at a loss to understand how it can confer a power to make recitals in a bond that will do away with the constitution. None of the cases cited by the court, on page 5 of its opinion, with the exception of *Chaffee County vs. Potter*, arose under constitutional provisions. The case of *Wesson vs. Saline County*, reported in 73 Federal Reporter, 917, was decided by the circuit court of appeals for the seventh circuit on the same day that it determined the case of *Graves vs. Saline County*. The *Graves* case was decided by the Supreme Court of the United States, and is reported in the same volume of reports with *Evansville vs. Dennett*. In the *Graves* case the court expressly holds that where there is a constitutional limit beyond which a county cannot go, there can be no estoppel by any admission or even by receiving and enjoying the proceeds of the bonds.

*Graves vs. Saline County*, 161 U. S., 359.

Evansville *vs.* Dennett, decided by the Supreme Court on the same day with the Graves case, does not in any manner conflict with this ruling. That case involved simply a construction of the charter provisions of a city organized by the legislature. The legislature had plenary powers over municipal incorporations, and could of course invest them with any power it saw fit, and no question of constitutional construction was considered. Chaffee County *vs.* Potter, and National Life Insurance Company *vs.* The Board of Education, decided by this court, seem to be the only cases which expressly decide that a county can estop itself by recitals from showing that the constitution has been violated. In the Potter case, the question of the constitutionality of a law investing a board of commissioners with power to defeat a constitutional inhibition by a recital

185 in a bond was neither discussed by counsel nor considered by the court. This court, of course, is bound by the Potter case, but not more so than by those subsequently decided, and which modify or limit its general operation. We think the case of Sutliff *vs.* Lake County disposes of the Potter case, and is based upon a correct interpretation of the constitution. The court will note that Mr. Justice Gray dissented in the Potter case and delivered the opinion in the Sutliff case. The Sutliff case has been followed in the case of Graves *vs.* Saline County, and in all the other decisions of the court since it was rendered. A careful consideration of these cases demonstrates that the county had, and that the legislature could give it, no right to make any recital which would estop it from the defense of constitutional violation.

Buchanan *vs.* Litchfield, 102 U. S., 278.

Dixon Co. *vs.* Field, 111 U. S., 83.

Sutliff *vs.* Lake Co., 147 U. S., 230.

Graves *vs.* Saline Co., 161 U. S., 359.

### III.

#### *The Evidence as to Semi-annual Statements.*

The court says that there is no evidence in the record that any semi-annual statements, as required by section 30 of the act under which the bonds were issued, were ever made out. We do not know whether it is necessary to go over the evidence in the record upon this point, or not. We presume the court examined the record carefully and saw what it contains. Nevertheless, we call attention to page 119 of the Record, Exhibit 30, which recites, after stating that

186 it was the regular January meeting of the board of county commissioners and noting the presence of the commissioners, the following resolution:

"On motion, it is ordered that the semi-annual statement of the financial affairs of the county, as required by section No. 447 of the General Laws of Colorado, be made by the clerk of this board, and when so made, approved by this board, signed by the chairman and attested by the county clerk, that the same be published in the *Carbonate Weekly Chronicle*, the *Leadville Weekly Democrat*, two weekly newspapers published in said county of Lake."

On page 114 will be found the semi-annual financial statement of the county, as published in the *Carbonate Chronicle*, the paper referred to in the resolution of the board, and on page 79 will be found the same statement as set out in the book of statements kept at that time. We would also call the court's attention to the testimony of Mr. Newell, beginning upon page 70 of the Record, in which he introduces the book containing the semi-annual statements made out and preserved by the county during these periods.

We confess that, with this evidence in the record, and with the evidence of Mr. Newell, we find it difficult to understand upon what theory the court is able to say that there was no evidence in the case that these semi-annual statements were kept and made. Does the court mean to say that because a county clerk of a county, for instance, should fail to record a deed in a book kept for deeds, but should record it in some other book in his office, that this deed would not be considered a record, and that the court could say that there was no evidence that a deed had ever been recorded? And suppose that a deed, when offered for record, was labeled a bill of sale; would the court construe this, although the instrument  
187 itself was, in fact, a deed, not to be such an instrument? The statement of the court upon this point is so at variance with what we have always understood to be the law that we must believe it was based upon the brief filed by counsel for the plaintiff in error, and not upon a careful examination of the record. The supreme court of Pennsylvania, in a case already called to the attention of the court, has held that if such a record as this was not kept, a purchaser of bonds would be charged with what it ought to contain, and this rule is sanctioned by Judge Dillon, and seems to be sanctioned by the Supreme Court.

Millerstown vs. Frederick, 114 Pa. St., 435.

Dillon on Municipal Corporations, sec. 529a and notes.

Doon Township vs. Cummins, 142 U. S., 366.

We would also call the court's special attention in this connection to our contention made in our main brief that the record of semi-annual statements was not the only public record referred to in the act under which these bonds were issued. The court does not refer to this contention of ours at all in its opinion, except to say, upon page 5, that except for the provision contained in section 30 of this act, etc., the county would not be estopped from finding these various facts. In our former brief we called the court's attention to the fact that there were four records provided by the identical act under which these bonds were issued showing the amount of county indebtedness: First, the register of county warrants; second, the bond register; third, the semi-annual statements, and, fourth, the order  
188 made by the county commissioners specifying the amount of debt to be created. This court in the case of Rollins vs. Gunnison County has specifically referred to the last of these provisions as being a record of which purchasers will be required to take notice. We cannot conceive why these other records are not of equal importance. They are required by prior provisions of the



same act, provisions of equal force and effect as that relating to semi-annual statements, and why they are not notice to purchasers of bonds just as much as this sacred section 30 we are unable to comprehend. We refer the court to our former brief, pages 30 to 42, where the statutes are set forth at length and this matter is discussed.

#### IV.

##### *The Effect of this Being a Debt by Loan.*

There seems to be no question in the minds of the court but that this was a debt by loan. In this connection we desire to call attention to the date when it was created. The court says some time after September 6, 1880. The sworn complaint filed by the plaintiff alleges that the debt was contracted and the bonds were issued on July 31, 1880. The proof shows that on March 17, 1880, \$11,000 of the bonds were issued to Walter H. Jones and the money paid into the treasury of the county. (Transcript of the Record, p. 91.) On August 3, 1880, Mr. Roberts bid for the balance of the bonds, was accepted and they were sold to him. (Transcript of the Record, p. 103.) Then on page 104 of the record commences a resolution of the board which shows that the bonds already issued were called in and new ones given in their place with some change in the phraseology. We do not understand that the substitution of a new bond for an old one is the creation of a new debt; in fact, the supreme court of this State in the case of *Standley vs. Lake* 189 County, recently decided, has held that it is not the creation of a new debt, and such is the decision of the Supreme Court of the United States.

*Doon Twp. vs. Cummins*, 142 U. S., 366.

The debt in this instance was created when the bids for the bonds were accepted and they were ordered issued. The cancellation of the first issue and the substitution of new bonds in their place would not be the creation of a new debt. If the bonds were issued upon the assessment of 1879, they showed upon their face that they were issued in excess of the constitutional limit. Under the assessment-roll of 1879 the limit of indebtedness of the county for all purposes would be \$40,000, or slightly under, so that the purchaser by looking at the assessment-roll and the face of the bonds would be put upon notice. The same rule applies if this is a debt by loan to its creation in any one year. As this is a matter which seems to have been debated between the members of the court and upon which they have divided in opinion, we do not know that any further discussion upon our part will further enlighten any member of the court. We recognize the fact that the language of Mr. Justice Lamar in the *Rollins* case, and of our supreme court in the *May* case, were, perhaps, not necessary for a decision of the particular point before the court, but we believe that where the supreme court of a State has construed its own constitution in a certain way, and the Supreme Court of the United States has expressly approved such construction, and where the language of the constitution itself is so clear that

there can be but one reading of it, that these constructions should be binding upon other courts. This becomes the more obvious when it is considered that our supreme court has construed the same provision in the same way pending this case in the trial court. The supreme court of Colorado has placed this identical construction upon the constitution of the State.

*In re Contracting State Debt*, 21 Colo., 399.

## V.

### *Violation of Constitutional Proviso a Mere Irregularity.*

If we correctly apprehend the effect of that part of the opinion relating to an overissue of the bonded indebtedness for the year 1879, it is, that if a constitution, although prohibiting the creation of a debt by loan for one year beyond a certain sum, yet permits a total debt by loan beyond that sum, the officials empowered to contract the obligation may, notwithstanding the yearly limitation, create the entire liability in any one year, their misconduct being at best a mere irregularity. In other words, the deliberate disregard of a constitutional inhibition by the county commissioners of Lake county was of no consequence to the tax-payers, who could in any event have been charged with the obligation if it had been strung out over a series of years, instead of appearing as a single transaction. The consequences of such a declaration are difficult to determine; for if that part of section 6 of article 11 which limits the amount of indebtedness which a county can contract in any one year is merely directory, it ought to follow, and must logically follow, that every other limitation provided by that section is directory also, for the language of the section is unequivocally prohibitory: "Such indebtedness contracted in any one year shall *not* exceed the rates upon taxable property in such county," etc. If this is not prohibitive, how can these words, "The aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited," etc., be prohibitive?

In other words, if a limitation upon power to contract debt in any one year is binding upon nobody, the limitation upon the general power to contract indebtedness must be equally meaningless.

Suppose that the commissioners of Lake county had caused an election to be held upon a resolution declaring the sum of \$100,000 necessary for public improvements, and at an election held in '79 the tax-payers voted for the indebtedness. Suppose, also, this sum in bonds had been issued and issued in one year. Might not this court with equal propriety say, first, that the issuance of these bonds in the same year was a mere irregularity, and that the total issue beyond the constitutional power of the commissioners to create debts for any purposes was also an irregularity?

Our investigation of the authorities, since receiving the court's opinion, has been fairly thorough, and we have been unable to find any decision which warrants this finding. The people of the State,

in framing and adopting their constitution, wisely attempted to restrict the power of certain officials in contracting public obligations. So far as language could do it, they made themselves clearly understood. The necessity for such a limitation was made apparent during the infancy of the Commonwealth by the conduct of certain of its municipal subdivisions. Many of the county boards in the State evinced a disposition to discriminate between what were called obligations voluntary and obligations involuntary; the latter were said to be those necessarily incurred in the discharge of public duties,

192 in the enforcement of the laws and in the transaction of public business. These were said to be above and beyond the constitution; and the door thus opened became a portal for the entry of fraud and wrong, in all its varied forms. Controversies soon arose, and were finally crystallized in the case of the People at the relation of Rollins against May, quoted in our original brief. From that time on, with the exception of a decision of his honor, Judge Brewer, in the circuit court of the United States, down to the pronouncement of this opinion, section 6 of article 11 of the constitution has been declared to be an absolute barrier between an honest and capable administration of county affairs and their bankruptcy. The announcement by this court that one of its prohibitions is of no importance, and merely directory, we fear will prove the entering wedge into this line of decisions, and may be followed by similar ones relating to other portions of the section.

The court virtually holds that it is the statute, and not the constitution, which gave to the commissioners of Lake county the power to issue the bonds in suit. The constitution is said to be restrictive merely, and to be permissive in no sense, while the law enacted by the legislature under its provisions is the source to which the commissioners must have looked for authority to act in the premises. We may, for the purposes of the argument, accept this statement as absolutely sound; nevertheless, we find in the law itself a restriction upon the action of the board as stringent and unmistakable as any presented by the constitutional section under consideration. This law was printed upon the back of every bond, and informed all purchasers of its provisions, yet the law giving authority to contract the debt, as well as the constitution, restrictive only in its character, forbade the issuance of \$50,000 in 1879, or in 1880

193 prior to September of that year, that being the date upon which the assessed values for 1880 became effective.

The Commissioners of Lake County *vs.* Stanley, sup. court Colo., Jan., 1879.

Ever since Lake County *vs.* Rollins, and Lake County *vs.* Graham were decided by the Supreme Court of the United States, it has been the admitted law that holders of bonds were bound to take notice of the assessed valuation of counties. This notice, coupled with the prohibitory requirements of both law and constitution, was a conclusive warning to every holder of every bond of the \$50,000 issue that such issue was void, by reason of excess. If the practical operation of this decision is not to change the rule declared and adopted

by the Supreme Court of the United States in similar cases, then we are wholly mistaken in the interpretation which we have given to the court's opinion.

To show the condition of Lake county when these bonds were issued and the manner in which its obligations have been heaped up from year to year we call attention to pages 10 to 22 of the brief in support of the petition for rehearing filed in the case of The Board of County Commissioners of Lake County vs. Platt, No. 803 on the docket of this court. The court will also find in that brief a clear discussion of some other phases of the constitutional questions here involved.

We are aware that to some extent, at least, it is the policy of this court to decline petitions for rehearing. Nevertheless, a rule of the court authorizes their making, and surely it must have been intended to subserve some needed purpose, or provision would not have been so made therefor. Some rules and practices are more honored in the breach than in the observance, and we earnestly ask this court to carefully consider before denying the request which we here make for a rehearing, reargument and redecision of this all-important controversy.

Respectfully submitted.

GEORGE R. ELDER,  
THOMAS, BRYANT & LEE,  
*Attorneys for Defendant in Error.*

Attorneys for defendant in error hereby certify that in their opinion the foregoing petition for rehearing is well taken and that the points therein presented are substantial and meritorious.

GEO. R. ELDER,  
THOMAS, BRYANT & LEE,  
*Attorneys for Defendant in Error.*

Endorsed: Filed May 31, 1897. John D. Jordan, clerk.

195 (Order Denying Petition for Rehearing.)

And on the seventh day of June, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order denying the petition of defendant in error for a rehearing in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term,  
1897.

MONDAY, June 7, 1897.

HARRY H. DUDLEY, Plaintiff in Error,	} No. 821.
<i>vs.</i>	
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Lake, Colorado, Defendant in Error.	

In error to the circuit court of the United States for the district of  
Colorado.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the defendant in error and the brief filed in support thereof.

On consideration whereof it is now here ordered by this court that said petition for a rehearing of this cause be, and the same is hereby, denied.

June 7, 1897.

*(Motion for Stay of Mandate.)*

And on the fourteenth day of June, A. D. 1897, a motion of defendant in error for stay of mandate was filed in said cause in the words and figures following:

UNITED STATES OF AMERICA,	} ss :
District of Colorado,	

In the Circuit Court.

196	HARRY H. DUDLEY, Plaintiff in Error,	}
	<i>vs.</i>	
	THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, Defendant in Error.	

Comes now the defendant in error in the above entitled cause and respectfully petitions the court to enter an order staying the mandate in said cause until the defendant in error has time to present an application to the Supreme Court of the United States for a writ of certiorari, and as the Supreme Court of the United States has adjourned until the October term the defendant in error respectfully petitions a stay upon the mandate until the 15th day of November, A. D. 1897, and said defendant in error respectfully shows that the opinion in this case was rendered by a divided court, and is based entirely upon the decisions of the Supreme Court of the United States construing the constitutional provisions of the State of Colorado, and the case is one which should be reviewed by the Supreme Court of the United States, if that court will take jurisdiction.

Said defendant in error further shows that nothing can be gained by issuing the mandate at the present time, for the reason that it will necessitate another trial of the case in the United States circuit court for the district of Colorado, and at the present time the situation of that court, as is well known to this honorable court, is that,

owing to the failure of Congress to appropriate money for the purpose of paying jurors, said court has no jury, and there will be no jury until the new appropriation bill for the fiscal year beginning July 1st, 1897, becomes effective, and the circuit court has announced that there will be no jury trials until the November term of said court, the only jury to be called being one in the district court for the trial of criminal cases, so that no injury or harm will be done to the plaintiff in error or any one else by withholding the mandate in said cause until the 15th day of November, 1897.

THOMAS, BRYANT & LEE,

*Attorneys for Def't in Error.*

197      Endorsed: In the circuit court of appeals. Harry H. Dudley *vs.* The Board of County Commissioners of Gunnison County. Motion def't in error for order staying mandate. Filed Jun- 14, 1897. John D. Jordan, clerk. Thomas, Bryant & Lee, attorneys for def't.

*(Order Staying Mandate.)*

And on the fourteenth day of June, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order staying the mandate until October 26, 1897, in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

MONDAY, June 14, 1897.

HARRY H. DUDLEY, Plaintiff in Error,

*vs.*

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY } No. 821.  
of Lake, Colorado, Defendant in Error.

In error to the circuit court of the United States for the district of Colorado.

This cause came on this day to be heard upon the motion filed by counsel for defendant in error for an order staying the issuance of the mandate in said cause until 26th day of October, 1897, for the purpose of presenting an application to the Supreme Court of the United States for the allowance of a writ of certiorari.

On consideration whereof, it is now here ordered by this court that said motion be, and the same is hereby, granted, and that the mandate in said cause be, and the same is hereby, stayed until the 26th day of October, A. D. 1897.

June 14, 1897.

198      *(Objections of Plaintiff in Error to Application for Stay of Mandate.)*

And on the eighteenth day of June, A. D. 1897, the objections of the plaintiff in error to the application of the defendant in error for

a stay of mandate was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following :

In the United States Circuit Court of Appeals.

HARRY H. DUDLEY, Plaintiff in Error,

*vs.*

BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, Defendant  
in Error.

Objections of plaintiff in error to motion of defendant in error to stay mandate in said cause.

First. After reversal of the judgment in the lower court and the overruling of the petition for rehearing, we know of no authority or precedent by which this court can maintain the cause in this court. The successful party is entitled to have the mandate of this court issue at once.

Second. There is nothing suggested in the motion setting forth any real ground for the Supreme Court issuing a certiorari. The motion states that the decision of this court is "based entirely upon the decisions of the Supreme Court of the United States construing the constitutional provisions of the State of Colorado, and that the case is one which should be reviewed by the Supreme Court of the United States, if that court will take jurisdiction."

It is not even suggested that there is want of uniformity between the decision of this court and the decisions of the Supreme Court of the United States, on which the decision of this court was based. The motion fails to give even color of a supposition that the Supreme Court would issue a certiorari.

Third. Congress made the appropriation nearly two weeks ago for the cost of a jury, which has been called to sit in the Federal court during the month of July, and the jury will actually be in attendance at that time.

Fourth. The jurisdiction of the court of appeals in a case of this kind is final.

199 Fifth. The plaintiff in error expects to be ready and desires to have a trial of this case at the July term of the circuit court.

Respectfully submitted that the motion to stay the mandate should be denied.

J. E. McKEIGHAN,

*For Plff in Error.*

Endorsed : No. 821. In the United States circuit court of appeals. Harry H. Dudley *vs.* Board of County Commissioners of Lake County. Objections of plaintiff in error to motion of defendant in error to stay mandate in said cause. Filed Jun-18, 1897. John D. Jordan, clerk.

200 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing 199



pages contain a true copy of the portions of the transcript of the record upon which the cause was heard in the United States circuit court of appeals, and full, true, and complete copies of the proceedings and record entries, including the opinion of said circuit court of appeals, in the case of Harry H. Dudley, plaintiff in error, vs. The Board of County Commissioners of the County of Lake, Colorado, defendant in error, No. 821, December term, 1896, as the same remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this tenth day of August, A. D. 1897.

JOHN D. JORDAN,

*Clerk of the United States Circuit Court of Appeals  
for the Eighth Circuit.*

201 UNITED STATES OF AMERICA, ss :

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

HARRY H. DUDLEY, Plaintiff in Error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY,  
Colorado, Defendant in Error.

Error to the circuit court of the United States for the district of Colorado.

The Supreme Court of the United States, upon the application of the above-named defendant in error, having granted a writ of certiorari to the judges of the United States circuit court of appeals for the eighth circuit, by which said court is commanded to send without delay to the said Supreme Court the record and proceedings in said cause, and a certified transcript of said record and proceedings having already been filed in the office of said clerk of said court, upon which said application for writ of certiorari was made, now, therefore, it is hereby stipulated and agreed that the said certified transcript now on file as aforesaid may and the same is hereby to be taken as return to the said writ, and that no other or further certified transcript of the record for that purpose shall be required.

Dated at Denver, in the State of Colorado and circuit aforesaid, this — day of October, A. D. 1897.

DAN'L E. PARKS,

H. B. JOHNSON,

EDMUND F. RICHARDSON,

*Attorneys for Plt'f in Error.*

GEO. R. ELDER,

C. S. THOMAS,

W. H. BRYANT,

H. H. LEE,

*Att'ys for Def't in Error.*

Endorsed: United States c't court of appeals, eighth judicial circuit. Harry H. Dudley *vs.* Board County Commissioners Lake County. Stipulation as to return to writ of certiorari. Filed Oct. 27, 1897. John D. Jordan, clerk.

202 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing page contains a true copy of the stipulation as to return to writ of certiorari from the Supreme Court of the United States in the case of Harry H. Dudley plaintiff in error, *vs.* The Board of Commissioners of Lake County, Colorado, No. 821, May term, 1897, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit  
Court of Appeals, Eighth  
Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this 29th day — October, A. D. 1897.

JOHN D. JORDAN,  
*Clerk of the United States Circuit Court of  
Appeals, Eighth Circuit.*

203 UNITED STATES OF AMERICA, *ss.*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Being informed that there is now pending before you a suit in which Harry H. Dudley is plaintiff in error and The Board of County Commissioners of the County of Lake, Colorado, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Colorado, and we being willing for certain reasons that the said cause and the record and proceedings therein

should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,  
*Clerk of the Supreme Court of the United States.*

205 [Endorsed:] Case No. 16,687. Supreme Court of the United States. No. 474, October term, 1897. The Board of County Comm'rs of Lake Co., Col., vs. Harry H. Dudley. Writ of certiorari and return. Filed Oct. 27, 1897. John D. Jordan, clerk. Office Supreme Court U. S. Filed Nov. 1, 1897. James H. McKenney, clerk.

*Return to Writ of Certiorari.*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, in obedience to the command of the within writ and in pursuance of the stipulation of the parties, a true copy of the original of which is hereto attached, do hereby certify that the transcript of record furnished with the application for a writ of certiorari to the Supreme Court of the United States in the within-named cause contains a full, true, and complete transcript of the record and all things concerning the same, as full, true, and complete as the originals of the same now remain on file and of record in my office.

Seal United States Circuit Court of Appeals,  
Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of St. Louis, Missouri, this twenty-ninth day of October, A. D. 1897.

JOHN D. JORDAN,

*Clerk U. S. Circuit Court of Appeals, Eighth Circuit.*

Endorsed on cover: Case No. 16,687. U. S. C. C. of appeals, 8th circuit. Term No., 177. The Board of County Commissioners of the County of Lake, State of Colorado, petitioner, vs. Harry H. Dudley. Filed October 11, 1897.